



**14<sup>th</sup> Term Commercial Customs Operations Advisory Committee**  
**April 27, 2016**

**TRADE ENFORCEMENT AND REVENUE COLLECTION SUBCOMMITTEE**

**010001**

COAC recommends that CBP utilize CSMS messaging to advise or inform the trade of emerging compliance risks that will initiate enforcement activity as well as changes in port operation. This includes port pipelines and notifications from Centers of Excellence and Expertise to be provided via CSMS message as the trade migrates to more centralized processes. In addition, CBP should also place all CSMS messages in a single searchable location, via CBP.gov.

**010002**

COAC recognizes that CBP's trade enforcement vision strives to focus on more substantial enforcement areas and not just taking a "parking ticket" approach for minor non-compliance (e.g., Option 1 or other liquidated damages claims of a few hundred dollars), especially non-repetitive and clerical errors involving both imports and exports. Similar to ISF and other new, phased-in enforcement or policy regimes, CBP should provide at least 30-day notice to the trade in order to allow ample time to comply. This policy further supports CBP resource allocation decisions for application to the more substantial, fraudulent, and egregious violators.

**010003**

COAC recommends that CBP provide specific deadlines for issuing liquidated damage claims similar to ISF so claims do not pile up unnecessarily due to any potential delays in issuing them. Liquidated damages are meant to be punitive in nature and allow the violator time to correct and rectify any problems. If violators are held to paying or petitioning liquidated damage claims within 60 days of issuance, CBP should also have guidelines to issue claims on a timely basis (e.g. 60 days) to avoid unnecessary hardship on the trade.

**010004**

COAC recommends that CBP review and update its Mitigation guidelines, in light of technology advances, trusted trader programs, and inter-agency enforcement partnerships to provide a transparent and uniform application of CBP's mitigation policy. Particularly in cases of less egregious violations, CBP should enforce and mitigate on more of an account-based, as opposed to transactional approach. This also encompasses COAC's prior recommendation to review the FDA Redelivery Mitigation Guidelines. COAC recommends that TERC create a Working Group

to assist CBP with addressing this recommendation within the next three to six months.

**010005**

COAC recommends that CBP utilize CSMS messaging and/or RSS feeds to more actively push out links to AD/CVD enforcement information, such as:

- AD/CVD enforcement updates issued monthly or as available on CBP.gov.
- The final disposition of 19 U.S.C. §1592(a) penalty cases for civil violations and Department of Justice criminal claims filed under the False Claims Act as reported on CBP.gov
- Year-end enforcement statistics on AD/CVD that breaks down enforcement efforts by commodity, country, etc. on an annual fiscal year basis (see IPR Annual Seizure Report as an example).

**010006**

COAC recommends that CBP should also utilize CSMS messaging and/or RSS feeds to provide a web link to advise the trade of new AD/CVD Orders. This represents an important stage in the AD/CVD investigation when all entries are suspended for liquidation and cash deposits must be secured.

**010007**

COAC recommends that the Centers collaborate based on their industry expertise to conduct outreach via webinars so the trade can be fully informed of AD/CVD orders among the various Centers' industry sectors and to increase informed compliance for the trade.

**010008**

COAC recommends that CBP establish RSS feeds from the AD/CVD page of its website to allow the trade to receive real-time notifications of any updates made to the site.

**010009**

COAC recommends that CBP should provide an updated document to the trade that provides clear definition of what is meant by terminated vs. inactive AD/CVD cases as identified in the customs broker outreach that was conducted.

**010010**

In accordance with Section 432 of HR 644, COAC recommends that CBP consult with COAC to further assess its legal ability to provide a public summary of AD/CVD investigations under the Enforce and Protect Act of 2015 to balance the need for trade enforcement transparency and support informed compliance for the trade.

**010011**

COAC recommends that the AD/CVD Working Group conduct a final review of CBP's AD/CVD Web Page to ensure it hosts links to all other government websites where AD/CVD information can be found. The AD/CVD web page is already robust, and this review should help complete this pending recommendation.

**010012**

COAC recommends that CBP conduct outreach via appropriate means so that the trade can be better informed of the e-allegations tool and how it facilitates and enhances CBP processes in identifying and enforcing IPR related issues, concerns, and allegations.

**TRUSTED TRADER SUBCOMMITTEE****010013**

COAC recommends CBP focus Trusted Trader strategic and tactical objectives on developing compelling benefits for voluntary participation in Trusted Trader Programs and should outweigh the cost of participation. These benefits are essential for the advancement of Trusted Trader Programs and must be articulated in specific facilitation metrics. Benefits must be aligned with section 101 of HR 644 on Improving Partnership Programs.

**TRADE MODERNIZATION SUBCOMMITTEE****Broker Regulations****010014**

Replace “district permit” and “national permit” with “the permit” or “permit” to better reflect the transition to a single permit framework that operates at the national level within the customs territory of the United States. Part 111

**010015**

Implement COAC recommendation 15057 to require brokers to have a single permit that allows them to have sufficient authority to conduct customs business at the national level within the customs territory of the United States. §111.2

**010016**

Prepare for the transition to a single permit by asking CBP to identify brokers that currently do not have a National Permit and work with them to properly and effectively transition to a single permit that operates at a national level. §111.2

**010017**

Eliminate the process for brokers to receive permit waivers as they will not be required under a single permit operating at the national level. §111.19

**010018**

Require brokers to provide satisfactory evidence of how he/she/the entity intends to exercise responsible supervision and control (“RSC”) to obtain a permit which includes, but is not limited to, a plan outlining the use of the ten (10) factors, list of physical offices, name and title of the licensed broker qualifying the permit; the list of other licensed brokers providing supervision and a list of employees conducting customs business. §111.19

**010019**

Make enhancements to ACE for the broker to identify the name and primary point of contact associated with the broker’s permit. §111.19

## **Responsible Supervision & Control**

### **010020**

Update the 10 factors, as appropriate, under responsible supervision and control (“RSC”) to better align with brokers’ current business practices; specifically clarify language to:

- a. Factor 4: CBP initiated reject rate resulting from entries or entry summaries expressed as a percentage of the broker’s overall business for the various customs transactions.
- b. Factor 5: The maintenance of current electronic or other media editions of CBP Regulations, the Harmonized Tariff Schedule of the United States, and CBP issuances
- c. Factor 6: The availability of an adequate number of individually licensed brokers for necessary consultation with the broker’s employees engaged in customs business.
- d. Factor 7: The frequency of supervisory contact (whether physical or virtual) of an individually licensed broker to another office that does not have a resident individually licensed broker.
- e. Factor 8: The frequency of audits and reviews conducted under the supervision of an individually licensed broker of the customs transactions handled by employees of the broker and evidence of corrective action taken as a result of the audits and reviews.
- f. Factor 9: The extent to which the individual who qualifies the permit is engaged in the customs business of the brokerage firm (removal of “district” and “national” permit language). §111.1

### **010021**

Provide guidance concerning the ten (10) factors demonstrating responsible supervision and control. Specifically, CBP should set forth best practices in a policy document, preferably in the Broker Handbook, including examples of how a broker, among other things, should: properly train employees; issue appropriate written instructions, guidelines and internal controls; maintain an adequate ratio of employees to a licensed broker based on factors such as the volume, type, diversity of business and commodities a broker handles etc.; engage in supervisory contact; and audit and review operations, etc.

## **License Examination**

### **010022**

Pursue a Notice of Proposed Rule Making (NPRM) at once to enable CBP to administer an electronic exam format in calendar year 2017. In the long term, automate the exam, the process for notifying examinees of their exam results and the appeal process. §111.13

### **010023**

Explore further enhancements to the broker exam such as automated access to resources like the Harmonized Tariff Schedule (HTS) and Explanatory Notes. §111.13

**010024**

Conduct the examination on the fourth Monday in April and fourth Monday in October to enhance applicant participation and CBP exam proctoring. In the long term, explore conducting a broker exam that can be taken ‘on-demand’ rather than conducted twice a year. §111.13

**010025**

Explore having the broker industry (e.g., NCBFAA) assist in developing broker exam questions in conjunction with CBP.

**Recordkeeping, Record Retention & Confidentiality****010026**

Duplicate records stored in non-customs territory of the United States must be available and retrievable by the broker upon request by CBP and parties as addressed in §111.24.

**010027**

Require brokers to provide CBP with the contact information of the individual who is the designated contact in §111.21(c) as well as how and by whom the records are stored. This information is to be provided with the application of a new permit and through the triennial process. §111.23

**010028**

Define “confidential business information” as including data, information, or records that concern or relate to the production, sales, shipment, purchase, expenditures, payment, warehousing, inventory management or other information of commercial value or significance unless such information is otherwise available within the public domain. §111.1, 111.24

**010029**

In addition to the current exceptions for sureties and duly accredited CBP or other U.S. officers or agents, enable the broker to disclose confidential business information to third parties to facilitate the movement of merchandise, perform security screenings or reviews, for collection purposes, to address any claim or potential claim against him/herself from the importer, or otherwise to conduct business within the broker’s scope of services consistent with its power of attorney. §111.24

**010030**

Consider any necessary revisions to 19 CFR §163 in accordance §111.21, §111.23 and §111.24 recommendations.

**Employee & Status Reporting****010031**

Streamline the employee reporting process through electronic submission and limit the required data elements to the employee’s name, social security number, date of birth, and current home address. §111.28

**010032**

Eliminate the requirement for a broker to report terminated employees; require the broker to, at a minimum, to report employees involved in customs business, but allow the broker to report all employees if necessary; and modify the employee reporting timeframe requirements to harmonize reporting timelines and to allow for flexibility in reporting frequency. §111.28

**010033**

Make enhancements to ACE that can better facilitate the electronic reporting of broker employee information (to include the system electronically determining if the broker is reporting new or terminated employees) and other broker-related functions.

**010034**

Review the information included in the triennial reporting process and identify ways to better facilitate and satisfy reporting requirements for the information (e.g., maintaining current information on the ACE portal).

**Relations Between Brokers & Importers****010035**

In all cases, the broker shall follow the importer's documented instructions regarding customs business to include the transmission of bills for services, copies of the entry releases and summaries, and other documentation or data filed on the importer's behalf. Ensure that importers to directly interact with the broker and provide guidance on processing merchandise. §111.36 (a)

**010036**

Implement COAC recommendation 13023 regarding obtaining a power of attorney directly from the importer. Recommend CBP implement immediately to meet requirements in the Trade Facilitation and Trade Enforcement Act of 2016 until it can be promulgated in regulation. §111.36 (a)

**010037**

Allow brokers to compensate freight forwarders for referring brokerage business without the conditions currently stated in the regulations. §111.36(c)

**Fees****010038**

Remove specific fee dollar amounts and reference a single source (i.e. CBP.gov, policy directive, etc.) for specific information on the fees and their schedule where all broker- related fees can be posted in order for CBP to have greater flexibility in changing fee amounts, if needed. §111.96

**010039**

Increase the permit fee to offset CBP's administrative costs. §111.96

**010040**

Increase the exam fee to offset CBP's costs for administering an electronic exam.

**010041**

Expand payment options for brokers and partners for broker-related fees to Pay.gov.

**Obtaining & Vetting Importer Information****010042**

Implement COAC recommendations 13024, 13061, and 13062 regarding updates to CBP Form 5106 data elements, limiting additional information from companies in good standing, and collecting such information as practical via ACE. Proposed new section §111.43

**010043**

Require customs brokers to collect appropriate and accurate data for the CBP Form 5106 as practical, available and necessary for a broker to conduct due diligence on, and verify the identity of, an importer including a foreign national. Proposed new section §111.43

**010044**

Enhance ACE capabilities to enable importers to provide the remainder of CBP Form 5106 data at the importer's, as opposed to the broker's, disposal and also to enable customs brokers to review information maintained by relevant Federal agencies for purposes of verifying the identities of importers. Proposed new section §111.43

**010045**

In order to implement section 116 of the Trade Facilitation and Trade Enforcement Act of 2016:

1. To verify the authenticity of such information the customs broker will take reasonable steps, for instance by reviewing publicly available open source information regarding the importer's business and as appropriate, by reviewing the physical address of the importer particularly in the case of small or privately held companies and/or for individuals.
2. In cases where the review calls into question the authenticity of the information, the broker will conduct a further review inquiry, as reasonable and practical, to identify the importer. A customs broker shall maintain the records of the information collected to verify the identity of the importer consistent with appropriate recordkeeping guidelines.
3. CBP should consider the manner in which the current Broker Known Importer Program (BKIP) could satisfy the broker's responsibility to vet an importer's identity and authenticity. Proposed new section §111.43

**Continuing Education****010046**

Pursuant to CBP's authority under 19 U.S.C. §1641(f), enabling it to prescribe rules or regulations it considers necessary to protect importers and the U.S. revenue, implement COAC recommendation 13010 requiring licensed brokers to have a minimum of 40 hours of continuing

education during their triennial reporting period. However, allow flexibility in qualifying continuing education credits with no restrictions/requirements on accredited continuing education. Proposed new section.

#### **010047**

As a policy recommendation, require a broker with a voluntarily suspended license to have a triennial period's worth of continuing education completed as a prerequisite to re-activate his/her suspended license. Also, recommend that CBP institute a waiver for this requirement upon a showing of good cause

### **Broker Management**

#### **010048**

Institute a Broker Management office reporting to CBP HQ, with full-time, dedicated personnel on a national level, with each broker assigned to one team for management purposes.

### **Broker Regulations**

#### **Single Permit & Permit Process**

#### **010049**

Ensure customs business, as performed by a Customs Broker, may only be conducted within the customs territory of the United States with the issuance of a permit. §111.19

### **Recordkeeping, Record Retention & Confidentiality**

#### **010050**

Require electronic customs records be stored in an electronic format within the customs territory of the United States. The records must be available and retrievable by the broker upon request by CBP to the parties addressed in §111.24. Duplicate records may be stored in non-customs territory of the United States. §111.21(a) and §111.23(b).

### **Centers Uniformity**

#### **Uniformity - Outreach, Communication & Informed Compliance**

#### **010051**

U.S. Customs and Border Protection Headquarters (CBP HQ) plays a vital role in promoting uniform practices across all ports of entry. The CBP Centers of Excellence and Expertise (Centers) should communicate and collaborate with HQ, and with one another, to ensure the consistent and uniform application of business rules, directives, processes and policies that affect trade.

#### **010052**

To the extent practicable, CBP should share reports and findings (e.g., The National Center for Risk and Economic Analysis of Terrorism Events (CREATE report)) including performance measurements and metrics regarding the efficiencies, costs for participants, and best practices of



the Centers as a result of employing risk management and account-based processing principles to enhance uniform decision-making. At least on an annual basis CBP should offer a questionnaire to Center accounts to obtain industry input to gauge such progress and report such findings to the Trade. (The University of Virginia C-TPAT study is a good example.)

#### **010053**

CBP HQ should provide consistent, clear messaging regarding the status and intended length of the Centers test as well as benefits provided to such “participating accounts.” The Centers should also provide or, at least serve as a reference point for, information on CBP partnership programs (Customs – Trade Partnership Against Terrorism (C-TPAT) or Importer Self-Assessment (ISA)), including the benefits of those programs internal and external to the Centers to encourage participation.

#### **010054**

CBP shall provide each Center with its own webpage embedded in CBP.gov. The webpage would provide a collection of existing and current industry based information, decisions and publications in consultation with COAC (e.g., Informed Compliance Publications, Customs Rulings On-Line Search System (CROSS) rulings and decisions, and educational information) -- this would pull and consolidate from existing resources already on CBP.gov to make the information more manageable by industry. Additionally, CBP HQ shall interface with PGAs to obtain their industry-related links to be placed onto the Center webpages.

#### **010055**

Centers shall collaborate with the trade to request and obtain industry focused information to create and further develop industry guidance through new or updated Informed Compliance Publications or other means.

#### **010056**

The Centers should share information to assist the trade in achieving compliance in the CBP priority trade issues that often result in enforcement actions such as Antidumping and Countervailing Duty (AD/CVD), Intellectual Property Rights (IPR), Free Trade Agreements (FTAs), etc.

#### **010057**

Each Center should conduct webinars and participate at CBP and industry outreach events for the trade to introduce center staff, resources, and other benefits of being a managed account.

#### **010058**

Some of the webinars that the Centers provide should be geared specifically to small and medium sized entities with limited resources that may not have the staff or capacity to participate in a partnership program.

#### **010059**

CBP and the Trade should utilize a single automated platform enabling Automated Commercial Environment (ACE) account holders and the Port, Centers, and other areas of CBP to communicate, as well as to submit and access information, regarding binding rulings, protests,

and internal advice, including status notifications once binding rulings are submitted and in the queue for processing (e.g., ruling under review, additional information required, referral to HQ, etc.).

#### **010060**

National Import Specialist (NIS) should report to the Center chain of command, as COAC believes that this will enhance CBP's internal/external communication, knowledge, and education, facilitate responsiveness, and provide more uniform, account based services.

#### **010061**

Because of the critical role customs brokers play nationally in the entry and release of merchandise, CBP should encourage the Centers to align entry specialists in a manner that provides a consistent approach to broker management on a national level.

### **Levels of Service & Trusted Partner/Trader**

#### **010062**

There shall be a higher level of service as well as outreach for partner accounts (ISA or C-TPAT) including enhanced communication, accessibility and responsiveness (including updates and trends to increase or maintain compliance) with their National Account Manager (NAM) or other Center representative. While the Centers should grant the highest levels of service to ISA accounts, the Centers still should provide enhanced levels of service to C-TPAT and Center "participating" (testing) accounts.

#### **010063**

Centers and NAMs should maintain, and as practicable, increase messaging internally to achieve collaboration and facilitation between trusted partners (ISA and C-TPAT).

#### **010064**

The C-TPAT office should assess the feasibility of developing an organizational structure that mirrors the industry specific Centers concept that enables the respective industries to work with dedicated Supply Chain Security Specialists (SCSS), in coordination with NAMs and/or Center representatives to provide enhanced benefits to C-TPAT accounts.

#### **010065**

When requested by a trusted partner (ISA and/or C-TPAT) Fines Penalties & Forfeitures (FP&F) shall request formal input from the Centers when a petition is filed involving seizures, penalties or liquidated damage claims. This would enable the Center to provide input to the mitigation process, promoting uniformity for all trusted partners.

#### **010066**

CBP should work with PGAs and the Trade to establish shared trusted partner/trader programs, e.g., C-TPAT + ISA + Partner Government Agencies (PGA) requirements (reference Trade Facilitation and Trade Enforcement Act (TFTEA) Act of 2015, Section 101) and leverage the sharing of redundant data applicable to common import requirements. The Centers should

provide industry expertise to encourage the development of uniform account- based requirements.

1. CBP should pilot such shared trusted partner/trader programs with one to two PGAs at a time, prioritized based on Center and importer feedback.
2. CBP, with the support of the Centers, should solicit input from the PGAs and Trade regarding trusted partner/trader program benefits.

#### **010067**

CBP and PGAs should consider together with the Trade whether there may be ways to offer benefits to trusted partners (e.g., expedited entry, screening and release; reduced examination -- except when associated with a risk such as security, health, etc.; expedited processing (e.g., sampling, analysis, etc.). Particularly for trusted partners (C-TPAT or ISA), the Centers should provide problem resolution contacts and work with the Ports to grant the importer “preferred location designation” to provide flexibility in the exam location, where practicable, in the event cargo must be held for exam or review. Trusted partners should also receive expanded permission to use electronic and/or blanket certifications/authorizations over transactional/paper requirements.

#### **010068**

Once “trusted trader” has been defined, the trusted trader benefits should include additional, increased levels of service that will be provided by the Centers beyond those provided to trusted partners, as available and applicable.

### **Other Core Processes: Bonded Facilities, Foreign Trade Zone (FTZ), FP&F, Release & Reconciliation**

#### **010069**

A formal line of communication should be established between port officials and the Centers to utilize their industry expertise to facilitate FTZ release issues and to enhance uniformity on FTZ issues, in general, at an account level. Centers shall assist with FTZ- related questions for their respective industry and provide a means to escalate matters if necessary and appropriate to Office of Field Operations – Headquarters (OFO-HQ) when the port is unable to resolve the issue locally.

#### **010070**

OFO-HQ should conduct more training and outreach with each port of entry that has an active zone to ensure consistent knowledge in FTZ management and compliance. Such training and outreach should also include Center industry experts.

#### **010071**

FTZ zone audits should be shared with Centers to provide industry expertise and input as appropriate.

**010072**

CBP and the Trade should utilize a single automated platform enabling ACE account holders and the Port, Centers and FP&F to communicate on enforcement issues such as seizure, penalty or liquidated damage claims, particularly those involving trusted partners (ISA and/or C-TPAT).

**010073**

CBP should develop protocols whereby the Centers should serve as a resource, and be called upon for their expertise as necessary, by Port officials for industry-focused as well as account-based knowledge for local release decisions.

**010074**

Because the drawback process is industry focused, account based and involves post release processing CBP should evaluate with input from the trade whether to integrate Drawback with Centers once automation is deployed.

**010075**

COAC supports CBP's efforts to manage Reconciliation within the Centers, to include appropriate training, the timing of which should coincide with ending of the current Automated Commercial System (ACS) Reconciliation Prototype as it completes its transition to processing in ACE by the end of 2016.

**Participating Government Agency Integration****010076**

Consistent with the One United States Government At the Border (1USG) initiative and implementation of International Trade Data System (ITDS), CBP should work together with participating government agencies (PGAs) through the Border Interagency Executive Council (BIEC), in consultation with the Trade, to conduct a study/report that evaluates the operational and financial impact on commerce and the U.S. economy resulting from the PGAs working with the Centers in applying account and risk management to their respective roles in import clearance. Newly available ACE data may provide objective basis to analysis.

**010077**

CBP should work through the BIEC to establish the appropriate level of support and resources from each PGA to act as liaisons to the Centers as appropriate to the industry, on an operational basis.

**010078**

CBP Center Directors, in coordination with CBP HQ, should have a formal input protocol to the BIEC regarding PGA challenges, new products/technologies, and data issues and to request outreach/support. CBP should establish periodic (e.g., quarterly) working level meetings between Center staff and the PGA(s) to which they are aligned (together with accounts that share the Center/PGA interaction). These working level groups should have access to provide feedback/recommendations to the BIEC.

**010079**

In coordination with the Center and PGA subject matter experts, CBP should develop and maintain a matrix of PGA-related areas to identify and address national systemic issues pertaining to an industry.

**010080**

CBP should work with PGAs to evaluate standard protocols for handling ‘pending/conditional release’ products, (i.e., CBP has released but PGA has not), particularly with an account-based focus.

**Other Recommendations****010081**

CBP should develop a paperless process for issuing 5955A penalty notices and electronic means for filing penalty, seizure and liquidated damages petitions similar to the eRulings and/or ACE Protest Module to search and receive timely updates.

**010082**

CBP should provide FTZ and bonded facility security recommendations consistent with C-TPAT guidelines.

**ONE U.S. GOVERNMENT AT THE BORDER SUBCOMMITTEE****010083**

We recommend that as soon as possible, CBP announce the mandatory ACE filing dates for any PGAs or entry types for which mandatory filing dates have not yet been announced.

**010084**

We recommend that the Border Interagency Executive Council (BIEC), established under Executive Order 13659 and recognized by the World Customs Organization as a best-in-class border management approach, be permanently established with a continued focus on cross-agency collaboration with the goal of promoting economic competitiveness through enhanced trade facilitation and enforcement.

**July 27, 2016**

**TRADE ENFORCEMENT AND REVENUE COLLECTION SUBCOMMITTEE****Intellectual Property Rights (IPR) Recommendations****010085**

After extensive exploration and discussion, the COAC recommends that the Known Importer Program initiative cannot be managed uniformly by all trade associations to pilot and/or implement the program at such time. As a result, the COAC recommends that the IPR Working Group continue to consider other approaches to developing a Known IPR Program with the National IPR Center and work together to co-create the program.

**010086**

COAC recommends that the National IPR Center partner with the IPR Working Group and various Trade Associations to promote the “Report IP Theft” campaign and encourage real-time reporting of IPR violations through a newly established 800 Hotline.

**010087**

COAC recommends that CBP investigate partnering with eCommerce stakeholders to develop an automated process for their on-line customers to complete a survey if they feel the shipment of product, they received is not legitimate along with the opportunity to submit an allegation through the “Report IP Theft” Button.

**010088**

COAC recommends that CBP should consult with the IPRWG to determine how to better facilitate cargo that arrives as “blanks” without a logo or trademark to distinguish the brand at the time of arrival to reduce resources CBP is expending on unnecessary seizures. The IPRWG should consider how this could be automated to manage known parties or entities to the transaction within the ACE Portal.

**010089**

COAC recommends that CBP take advantage of certain IPR best practices established by the Centers of Excellence and Expertise (Centers) to conduct webinars internally and allow Centers to gain knowledge of these successes, inform the trade of these successes, and inform industries of CBP’s efforts through these webinars and CSMS messaging.

**AD/CVD Recommendations pertaining to ENFORCE Act****010090**

To ensure the definition of evasion as defined by the ENFORCE Act is fully understood by the trade, COAC recommends that CBP conduct more public outreach to educate the trade on ENFORCE proceedings.

**010091**

To meet ENFORCE statutory requirements, COAC recommends that CBP be provided with the appropriate resources to establish and maintain an on-line reporting tool similar but distinct from the current eAllegation process on [CBP.gov](https://www.cbp.gov). The on-line reporting tool should include guidance on the ramifications for submitting false claims and/or information to CBP and require all parties in an ENFORCE proceeding to provide signed certifications of the accuracy of the submitted information.

**010092**

COAC recommends that CBP provide transparency for all parties to an ENFORCE proceeding and put procedures in place as fully allowed by ENFORCE statute that mitigate the risk of unwarranted damage to the reputation of innocent parties who have acted properly under the law.

## **AD/CVD Website and Outreach**

### **010093**

The AD/CVD Working Group reviewed CBP's web page and recent AD/CVD Brochure. COAC further recommends that CBP work with the AD/CVD Working Group to help disseminate this information to new and existing importers through various trade associations, which can also provide yearly updates to provide more education and outreach about the potential consequences of circumvention. The messaging should raise awareness of the compliance requirements associated with merchandise subject to AD/CVD.

### **010094**

In addition, COAC recommends that CBP consider using the new data elements they will collect under the New 5106 regulations, (importer contact name and email address) to make new importers aware of the compliance requirements and risks associated with merchandise subject to AD/CVD as well as other PTIs and informed compliance tools.

## **Bond Recommendations**

### **010095**

Activity Code 1 Single Transaction Bonds (STBs): COAC recommends that CBP seek to clarify and streamline the current bond formula if subject to Partner Government Agency (PGA) requirements so the trade can fully automate compliance within ACE at the HTS and line level, and CBP can more easily conduct sufficiency reviews. Such guidance should include clarifying which PGAs with hold authority are subject to bonding requirements for three times the value, and that this higher bond formula does not include PGAs that are disclaimed in ACE.

### **010096**

Activity Code 1 Continuous Bonds: COAC recommends that the current Reviewers and Analytical Bond Formula are sufficient to protect the revenue and satisfy certain PTIs provided that CBP's Centers of Excellence and Expertise continue to detect trends prior to liquidation or through audit and "adjust" continuous bonds when there is any outstanding debt that has not been paid or protested and jeopardizes revenue. However, these continuous bond formulas are insufficient for Anti-Dumping and Countervailing Duty (AD/CVD) as addressed in Recommendation #14.

**AD/CVD Duties:** COAC recognizes the challenges of a retrospective system in the U.S. and continues to support recommendation 12025 from the 12<sup>th</sup> Term of COAC that would provide a prospective system for collection of AD/CVD cash deposits. Because the revenue is not adequately protected when there is a retrospective change in the AD/CVD cash deposit that is posted at time of entry, COAC recommends that CBP leverage the current policy for "Use of Single Transaction Bonds as Additional Security for Anti-Dumping and Countervailing (AD/CVD)." COAC further recommends that CBP amend this current policy to revise the statement to "return the bond" to "liquidate the entry to exhaust remaining liability or exposure" and include this policy in the new bond directive for full transparency to the trade.

**010097**

Liquidated Damages: COAC recognizes that continuous bond formulas do not currently contemplate any inclusion of liquidated damages. The COAC recommends that CBP fully consider past history of liquidated damage claims and patterns before factoring these into any continuous bond formulas and consult with the Bond Working Group if and when such data is available to review and consider. Based on the current draft directive, COAC recommends that CBP better define how liquidated damages would be factored into any continuous bond formulas and should not include those liquidated damages that have been satisfactorily paid or petitioned by an otherwise compliant bond principal to resolve the matter. COAC also recommends that the Analytical Bond Formula can be used to contemplate liquidated damages paid by the surety to adjust bond amounts if such claims advance to a delinquent status.

**EXPORTS SUBCOMMITTEE****010098**

COAC recommends that CBP HQ, with COAC and PGA input, should develop and provide training in the short term and on a periodic basis to local CBP officials responsible for enforcing export laws and requirements. Such training should address CBP as well as PGA regulations(e.g., Census, BIS, DDTC, OFAC, etc.) and data requirements as relevant to different commodities and should lead to CBP standard operating procedures (SOPs) for processing export cargo in a uniform and efficient manner nationally.

**November 17, 2016**

**ONE U. S. GOVERNMENT AT THE BORDER (IUSG) SUBCOMMITTEE****010099**

In the spirit of streamlining America's Imports and Exports and coordinated border management, COAC recommends that CBP work with the Fish & Wildlife Service (FWS) to minimize data creep in the FWS PGA message set and increase process coordination. Data not used for admissibility decisions before, including forms that were kept in broker files but rarely requested by the PGA, should not be used for that purpose now. The agency should collect this data post-entry, if necessary, and it should be based on risk management principles in order to not impede the entry process.

COAC further recommends that CBP work with FWS to minimize the number of HTS codes that are flagged and limit the flags to those HTS codes that truly have a high likelihood of covering goods that are subject to the agency's requirements. In addition, CBP should work with FWS to align their disclaim process with that of other agencies and reinstate the FW1 flag. Finally, CBP should work with FWS to maintain the Non-Designated Port Exemption Permit (DPEP) or develop another way to ascertain the admissibility of goods while allowing regulated cargo to flow through all US ports of entry.

COAC recommends CBP share these recommendations with the Border Interagency Executive Council (BIEC).



## **North America Single Window Working Group**

### **010100**

COAC recommends CBP continue the detailed work with the U.S., Canada and Mexico, and to the greatest extent possible, harmonize all data elements being required by the countries for import and export manifests, and ensure that all data elements are in accordance with the WCO SAFE Framework.

It is also recommended that all three participating countries formalize the process of extracting the data they are authorized to access from a single source, thereby requiring the carrier to only submit one manifest transaction for both import and export purposes.

### **010101**

As the U.S. implements export manifest requirements for all modes, COAC recommends that CBP work with the U.S., Canada and Mexico to harmonize, where possible, the data required for U.S. export with Canada's import manifest and Mexico's not-yet-developed import manifest, and synchronize the timing requirements for filing.

### **010102**

For advance security filing, manifest, and cargo release, COAC recommends CBP work with the three countries to place the relevant filing requirement on the party most qualified to do so. Qualified parties are those most likely to have the best information and who can be held accountable to the various governments if the data is incorrect or false.

For advance security filings similar to ACAS and PACT, COAC recommends CBP work with Canada and Mexico to ensure these filings are made by the party who issued the lowest level transport bill, or in the absence of the ability to regulate that party, by the carrier.

For shipment-level information, COAC recommends CBP work with Canada and Mexico to ensure manifest filings are made by the party who issued the transport bill or in the absence of the power to regulate that party, by the carrier. Transport information should be provided by the carrier, as the carrier is the only party who can identify with certainty which shipments have been loaded onto a conveyance.

### **010103**

When identifying common data elements used by the U.S., Canada, and Mexico, COAC recommends the use of a standard naming convention aligned with the WCO Data Model III for standardized Customs and other border control agency import and export message. Using minimal common data elements to achieve an effective risk management solution should be the goal.

Furthermore, when CBP is analyzing advance data and all message sets for the North America Single Window, COAC recommends the WCO Data Model III should be used as a basis to build any future data and message sets among the U.S., Canada, and Mexico.

**010104**

COAC recommends CBP work with all three nations' government agencies who have authority over imported products to meet and harmonize their individual requirements to collect advanced data to make determinations in advance as to whether cargo should be released upon arrival, examined, or held for further research and testing. COAC also recommends CBP work with Canada and Mexico to identify agencies which have release/hold authority and prioritize harmonization efforts.

COAC recommends CBP work with the other government agencies to examine all permits and licenses required for import and export to determine any redundancies or areas where there are similar requirements and harmonize where possible.

**010105**

COAC recommends CBP review work completed to date on both the U.S.-Canada Beyond the Border initiative as well as the U.S.-Mexico High Level Economic Dialogue and 21<sup>st</sup> Century Border Management initiatives. CBP should leverage work completed specific to border operations by various Partner Government Agencies (PGAs) and Other Government Departments (OGDs) relevant to North American trade. COAC recommends CBP fully engage with Canada and Mexico to finalize and implement initiatives such as data harmonization, integrated cargo security strategy, and true mutual recognition of trusted trader partners.

**010106**

COAC recommends CBP work with Canada and Mexico to identify how each country defines advance security and admissibility data. This should provide a general overview to include modes impacted, time frames to submit, the responsible party who can present and/or submit advance security and admissibility data as well as a current and future end state for each country. To the extent possible under national legislation, these same data elements should be used for admissibility requirements across borders when filed as a unified entry/release including both advance security and admissibility data elements.

COAC further recommends CBP work with Canada and Mexico to develop uniform advance manifest data elements in both the truck and rail modes of transport to allow sharing of manifest data unilaterally across each border. To the extent possible under national legislation, the uniform advance manifest data elements in each mode should be used for admissibility purposes when accompanied by the required submissions for each country's entry/release process and export reporting requirements. As the data required for these modes of transport expands beyond harmonized manifest elements, COAC further recommends CBP develop a tri-lateral program for standardized advance security data elements that can also be used as a unified filing similar to how ISF operates for ocean in today's U.S. environment to provide for a unified, simplified security data and entry process (security filing, cargo release, and entry summary).

**010107**

Where possible, COAC recommends CBP work with PGAs/OGDs in the U.S., Canada and Mexico to accept globally recognized product identifiers, such as G-TIN, when submitted by an importer or exporter to describe the imported or exported product. Because these codes are more

specific and more descriptive of the product, the codes should be preferred over other types of identifiers used by specific agencies.

#### **010108**

To streamline the requirements for importing and exporting and to assist all three countries' government agencies with oversight over imported and exported products, COAC recommends CBP work with the U.S., Canada and Mexico to begin the process of harmonizing their PGA/OGD data and their definitions of each data element.

#### **010109**

COAC recommends CBP work with the U.S., Canada and Mexico to align, where possible, the data elements required for export filings into a single data set and single filing to benefit importers and/or exporters as well as the various regulatory agencies.

#### **010110**

COAC recommends CBP work with Canada and Mexico, so the single window data set accommodates the most specific shipment references available. All modes of transportation may transport consolidated shipments of cargo; therefore, the single window data set should accommodate simple bills of lading, master bills of lading, house bills of lading and sub-house bills of lading even though each mode of transportation may use different terminology.

#### **010111**

Anticipating a rapid growth of e-commerce in the next few years, COAC recommends CBP consider the WCO guidelines as they evolve and encourage the three nations to examine their current processes for e-commerce including entering and screening low value importations, not just to facilitate trade, but also to have adequate screening processes to ensure the health and safety of the citizens of the three countries. COAC recognizes that each country may establish a different value threshold for goods allowed under the de minimis, but screening by PGAs and CBP for health and safety should be similar.

### **TRADE ENFORCEMENT AND REVENUE COLLECTION SUBCOMMITTEE**

#### **010112**

COAC recommends CBP develop a forced labor mapping process similar to what was created for the Enforce and Protect Act (EAPA) for anti-dumping and countervailing duty (AD/CVD). While the process should focus on CBP roles and responsibilities, it should also include other government requirements, including those of the U.S. Department of State, U.S. Department of Labor, U.S. Immigration and Customs Enforcement (DHS-ICE), and additional relevant Partner Government Agencies (PGA), and Other Government Agencies (OGA). The mapping process should identify pain points and potential recommendations for resolving them.

#### **010113**

COAC recommends CBP conduct a series of webinars to educate all stakeholders including Civil Society Organizations (CSOs), importers, customs brokers, etc. about forced labor laws and relevant issues to increase awareness and compliance. These webinars should include the following perspectives:

- a. Industry specific webinars with CBP's Centers of Excellence and Expertise (CBP Centers)
- b. Efforts by the trade industry to address forced labor laws by industry/sector
- c. CSO efforts to help the trade industry identify forced labor within the supply chain
- d. Joint trade industry and CSO efforts to address forced labor

#### **010114**

COAC recommends several updates to CBP technology used to communicate forced labor updates, including:

1. CBP should promote the [trade.enforcement@cbp.dhs.gov](mailto:trade.enforcement@cbp.dhs.gov) email address for stakeholders to submit forced labor questions and develop an automated auto reply process.
2. CBP should use these questions to update a Frequently Asked Questions document on a quarterly basis and post the updates to cbp.gov.
3. CBP should implement the feedback provided to the forced labor page and supporting documents on cbp.gov in order to provide the trade with a clearer understanding of forced labor laws and processes. CBP should also provide more meaningful tools to clarify how importers can comply with forced labor laws. The Forced Labor Working Group has provided updates to various aspects of the forced labor page on cbp.gov for CBP's consideration in Appendix A.
4. CBP should clarify their ability to self-initiate allegations.
5. CBP should modify the CSMS messaging fields to allow selection of "Trade Policy Updates" on forced labor and RSS feeds when the forced labor page on cbp.gov is updated (similar to the COAC recommendations made for AD/CVD).

#### **010115**

COAC recommends CBP add new forced labor questions to the existing COAC survey to gauge the trade industry's knowledge of these issues and share the survey results with the trade industry. The Forced Labor Working Group has provided sample questions for CBP's consideration in Appendix B.

#### **010116**

COAC recommends CBP develop a catalog of available resources that have been developed to address forced labor. The catalog should be organized by Government, CSO, and Business resources. The Forced Labor Working Group has provided a sample Resource Catalog for CBP's consideration in Appendix C.

#### **010117**

COAC recommends CBP-HQ work through the CBP Centers to develop referral resources on forced labor for industry-specific sectors where applicable and publish these resources on cbp.gov.

## **Forced Labor Working Group - Legal Challenges Team**

### **010118**

COAC recommends the CBP Commissioner leverage the resources of the appropriate CBP Center, which has knowledge of the industry and is responsible for managing importer accounts, when making an allegation assessment or the decision to issue, revoke, or modify a withhold release order (WRO).

### **010119**

COAC recommends the CBP Centers engage in ongoing outreach and bi-directional education with all stakeholders active in preventing the importation of goods made with forced labor, including the importing community, PGAs, OGAs, CSOs, and other non-government organizations (NGOs). CBP-HQ and the Centers should also invite CSO and NGO representatives to take part in industry outreach efforts.

### **010120**

COAC recommends CBP modernize the current forced labor regulations in 19 C.F.R. 12.42-44 and provide for a public comment period. In addition to updating the regulations to remove the consumptive demand provision, CBP should consider the following updates:

- a. a. In regards to Proof of Admissibility requirements per 19 CFR 12.43, rely less on reference to specific documents that are obsolete or may become so in the future.
- b. Currently, forced labor regulations are silent on when CBP must respond to a WRO. COAC recommends CBP update the regulations, so they are similar to existing procedures, policies and directives for detention of merchandise, which CBP is required to follow in order to make a final determination within a specified timeframe. CBP should establish an appropriate timeframe to respond to an importer's proof of admissibility as a result of a WRO, and this timeframe should be incorporated into the revision of the regulations.

## **Forced Labor Working Group – Strategic Leadership Team**

### **010121**

COAC recommends CBP work with key stakeholders to develop and publish an Informed Compliance Publication (ICP) on Forced Labor. The Forced Labor ICP should include a detailed process for stakeholders (both CSOs and the trade industry) to understand how the current forced labor process works from CBP's perspective. In order for the trade industry to become strategic leaders in the field, the ICP should also include resources and guidance from CBP and other PGAs for industry to follow. The Forced Labor Working Group has provided a suggested outline and resources to include in the ICP for CBP's consideration in Appendix D.

## **GLOBAL SUPPLY CHAIN SUBCOMMITTEE**

### **C-TPAT Minimum Security Criteria Working Group**

#### **010122**

Minimum Security Criteria (Minimum Security Criteria) Purpose: The C-TPAT program is a voluntary program with a specific purpose of achieving the highest level of supply chain security

and facilitating legitimate trade. As such, COAC recommends that CBP maintain the focus of the program on supply chain security and additional Minimum Security Criteria should be focused on minimizing risks in the supply chain. The COAC recognizes the need of the Minimum Security Criteria to be periodically reviewed and updated as global security threats shift and evolve, the underlying goals of the C-TPAT program should be maintained.

#### **010123**

Additional Feedback: COAC commends CBP for taking steps to update Minimum Security Criteria as this process facilitated a productive interactive dialogue leading to a framework for the future of C-TPAT. In light of the fact that the Minimum Security Criteria will have a significant operational and financial impact on partners, the COAC recommends that CBP reach out to C-TPAT participants giving them 90 days to comment on the proposed new Minimum Security Criteria and allow CBP to integrate feedback. Given the proposed substantial changes to the program, the current process warrants additional outreach to C-TPAT participants.

#### **010124**

Benefits: COAC recommends that CBP work with the COAC working group to review and update program benefits and assist in establishing metrics. The goals are to facilitate trade, secure the supply chain, and maintain and encourage increased participation. To achieve these goals, it is necessary to find ways to offset the program costs.

#### **010125**

Cost-Benefit Analysis: In conjunction with developing the Minimum Security Criteria, COAC recommends that CBP work with C-TPAT participants to develop an analysis of the cost and benefits.

#### **010126**

Staged Implementation: Since the C-TPAT program's creation in 2001, and with current participation of over 11,000 companies, the existing Minimum Security Criteria have been widely adopted and institutionalized in business practices. As such, COAC recommends that CBP conduct a pilot phase of the new criteria to evaluate the operational feasibility. In addition, CBP should allow sufficient time for business to implement the new Minimum Security Criteria once they are finalized.

#### **010127**

Eliminating Redundancy: COAC recommends that prior to finalization and implementation of new Minimum Security Criteria, the Minimum Security Criteria should be reviewed in their totality to streamline requirements, remove potential redundancies with existing Minimum Security Criteria or any overlap with existing laws and regulations, and focus both CBP and Trade resources on areas of highest risk.

#### **010128**

International Obligations: The COAC recommends that CBP engage with international trade partners to ensure that any new requirements align with Authorized Economic Operator (AEO) standards to meet mutual recognition obligations.

**010129**

Outreach: COAC recommends that CBP provide training and reference materials on the new Minimum Security Criteria to ensure C-TPAT participants understand the objectives, risk, and requirements of each new Minimum Security Criteria well in advance of implementation.

**010130**

Uniformity & Transparency: COAC recommends that CBP's plan include the development and issuance of updated guidance to both C-TPAT partners and CBP including a transparent and uniform Tier 3 / best practices and validation process.

**010131**

Supply Chain Entities: In light of recent security threats, CBP should consider expanding C-TPAT participation to include other entities in the international supply chain currently ineligible for participation, e.g., domestic entities such as drayage carriers, rail carriers and warehouses.

**EXPORTS SUBCOMMITTEE****Post Departure Filing Working Group****010132**

COAC recommends the development of a detailed plan for implementing the PDF pilot based on the proposal developed by the WG and we respectfully request that CBP engage with the PDF Working Group to develop and launch that pilot in the next six months both in the air and ocean modes.

**March 01, 2017**

**TRADE MODERNIZATION SUBCOMMITTEE****International Engagement and Trade Facilitation****010133**

Leverage Advances from Prior Free Trade Agreements (FTAs): COAC recommends that CBP work with the appropriate U.S. government stakeholders and the private sector to review the text of more recent trade agreements to adopt modernized provisions, particularly in the areas of simplified rules of origin, importer self-certification, trade facilitation, enforcement, supply chain security, and non-tariff trade barriers.

**010134**

Continuity in Trade Preferences: NAFTA currently benefits U.S. exporters, U.S. importers, and consumers and it should continue to maintain trade preferences that provide a significant positive economic impact to U.S. workers and the long-term investments of our companies. COAC recommends CBP work with the appropriate U.S. government stakeholders and the private sector to ensure there is a continuity of trade preferences, that tariffs not increase and non-tariff barriers continue to be reduced, and that positive U.S. trade and investment persists with our NAFTA partners.

#### **010135**

Consistency in Implementation: In order to improve the consistency of NAFTA treatment to the same goods within the NAFTA region, COAC recommends that CBP work with Canada and Mexico to establish standardization in NAFTA trade preference qualification and consistent enforcement.

#### **010136**

North American Single Window: In another effort to simplify trade for all businesses, particularly small and medium sized businesses, the COAC recommends CBP work with Canada and Mexico to collaborate on cross border data sharing and data harmonization, remove or modernize unnecessary regulatory barriers within the North American Region through the use of a single window. (See COAC recommendations from the 1 USG subcommittee's North American Single Window Alignment working group delivered at the November 17, 2016 COAC meeting).

#### **010137**

Regulatory Cooperation: For products that are subject to partner government agency regulations, COAC recommends that CBP work with U.S. partner government agencies in the U.S. as well as Canada and Mexico to streamline and harmonize those regulations to create alignment in regards to documentation and data requirements, inspections, and enforcement in order to facilitate cross border trade within the NAFTA region for those regulated commodities.

#### **010138**

E-Commerce and Innovation: COAC recommends that CBP work with the appropriate U.S. government stakeholders and the private sector to ensure that NAFTA or other FTA reflects the need for modernization of regulations impacting the e-Commerce business model, including areas of admissibility, targeting, and partner government agency regulations. The goal would be to streamline regulatory requirements and improve enforcement.

#### **010139**

De Minimis Harmonization and U.S. Export Facilitation: COAC recommends that CBP work with Canada and Mexico to achieve a commercially significant *de minimis* level, which reflects the modern reality of online commerce. The U.S. has a *de minimis* value of \$800, which is the value at which companies pay no duties or tariffs. Canada has a *de minimis* value of \$20, and Mexico is \$50.

#### **010140**

Express Delivery Services (EDS): Since NAFTA was established, the U.S. has negotiated numerous FTAs with other countries. Newer agreements include provisions to harmonize the clearance and movement of goods in the EDS industry. COAC recommends that CBP work with U.S. government stakeholders to ensure NAFTA includes modern provisions with specific focus on the facilitation and streamlining of EDS shipments.

#### **010141**

Beyond the WTO Trade Facilitation Agreement (TFA): In many areas, NAFTA countries have gone beyond the TFA, and we should use this opportunity to promote regional competitiveness.



COAC recommends CBP work with Canada and Mexico to utilize prior FTAs trade facilitation chapters as a baseline to create a higher standard to support how modern borders should operate in the NAFTA region.

## **Recommendations on Revenue Modernization**

### **010142**

Duty, taxes and fees: The COAC recommends that CBP consolidates port specific daily and monthly formal entry statements, to one monthly statement, inclusive of all statements from all ports of entry nationwide.

### **010143**

Duty, taxes and fees, single entry and post entry reconciliation via 28s, 29s, PSCs, liquidated damages, rate advances and supplemental duty payments at liquidation: The COAC recommends that any form of payment currently processed manually such as duties, taxes and fees, single entries, reconciliation (NAFTA or Value), post entry adjustments via 28s, 29s, post summary corrections, liquidated damages, rate advances, and supplemental duty payments at liquidation, and/or voluntary tenders should be automated and available via ACE ABI, ACE AMS, the ACE Portal and Pay.gov. This payment process should anticipate importers as individuals, corporations as filers, brokers as filers and Surety when paying on behalf of the importer and/or bond principal.

### **010144**

All Fees: The COAC recommends that CBP regulations be updated to accept electronic payments.

### **010145**

Broker Fees: The COAC recommends that individuals or companies who hold Customs Broker Licenses be able to make payments through ACE for all brokerage related fees. This would include individual license holders, employers paying on behalf of the individual, and the company to pay fees on their own behalf through ACE or ACE portal, singly or combined.

### **010146**

Informal Entries: The COAC recommends that CBP create the ability for express consignment operators' brokers to pay duties, taxes, and fees electronically for daily consolidated informal entry filings, replacing manual check payments. See Great Idea Form (GIF) titled "Consolidated Informal Entry Summary (Courier Entries)."

### **010147**

Truck Crossing Fee: The COAC recommends that CBP requires that all carriers submit an eManifest through ACE prior to crossing. In addition, the Working Group recommends that an ACE application allows for the set-up of a deposit account to be linked to an eManifest so pre-payments may be automatically debited from the account based on the eManifest. Users should be able to view the detail and history of their financial transactions in the common ACE platform.

**010148**

Truck Crossing Fee: The COAC recommends that CBP leverage the RFID technology, including on FAST cards, to collect single entry payments.

**010149**

Truck Crossing Fee: The COAC recommends that truck carriers have the ability to view a detail and history of their DTOPS-related transactions via access through the ACE portal, including all transactions associated with payments based on eManifest.

**010150**

Truck Crossing Fee / APHIS/ CBP User Fee / Tonnage: The COAC recommends that CBP create a smart phone app to provide a more efficient way of pre-paying fees, to reduce lines at the border. Carriers, couriers or travelers could show their receipts on their smart phones at primary inspection sites, decreasing border processing times.

**010151**

Express Consignment Fee (Low Value Shipment Fee): The COAC recommends that since shipment manifests contain the breakdown of cargo by entry type and payment, it could be used to bill express consignment couriers for their express consignment fees, rather than the fee being self-reported. Alternatively, couriers could use a pre-paid account in ACE portal to pay for Express Consignment Fees.

**010152**

Ocean Fees: The COAC recommends that CBP consider providing an incentive for ship agents and/or carriers to move toward e-payments. If it is a current regulatory option to allow for payment by cash and/or check, there should be an incentive provision for e-payment on line. This should be in the form of an allowance for the ship agent / payer to be granted 48 hours following the vessel's arrival to make payment if done via one of the approved e-payment methods.

**010153**

Overtime Reimbursable Fee: The COAC understands the current complexity of the calculation of overtime fees as well as the difficulty to calculate these at the time the service is provided. The COAC recommends that the regulations be changed to simplify the current process and allow a more flexible method of overtime assessment, which would meet both CBP and Trade requirements. This would eliminate a significant amount of work for CBP in calculating the overtime required, and for industry who would be able to determine the due amount based on a defined rate, facilitating ease of payment. At such time as the regulation/s could be changed for the overtime calculation, it is recommended that payment of overtime be added to the fees collected via the Mobile Collection Receipts (MCR) application.

**010154**

PGA Fees: The COAC recommends that CBP, through ACE single window, create the ability for fees associated with Partner Government Agencies (PGA) processing services be automated (i.e., Fish and Wildlife (F&W) overtime clearance fees and USDA annual permits).

## **Rulings and Decisions Improvement Resource Allocation**

### **010155**

COAC recommends that in light of the foreseeable, imminent shifts in U.S. trade and border policy, CBP should ensure that R&R possesses the necessary resources to maintain trade and other critical subject matter priorities despite other issues that may become of significant concern. COAC also feels this is necessary due to the Administration's mandate to eliminate two regulations for every one regulation that the Government issues.

### **010156**

In order to expedite and facilitate the review and approval of rulings and decisions, COAC recommends CBP and R&R undertake a review of its work process and organizational structure to optimize its resources particularly to ensure that it operates at a sufficient supervisor to attorney ratio. The ratio should be a key consideration in the organization of R&R. For instance the Tariff Classification and Marking Branch has one supervisor for nineteen (19) employees and presently covers subject matter that four branches previously handled.

## **Communication and Outreach**

### **010157**

COAC recommends that until the rulings submission process is fully automated, R&R should provide a template and/or checklist to the Trade to help ensure ruling requests and protests include all vital information needed for R&Rs deliberation.

### **010158**

COAC recommends that R&R conduct outreach, as resources permit, at association events and via webinars to clarify the type of information and best practices the Trade should consider when requesting a ruling or decision.

### **010159**

To enhance consistency and uniform decision making, COAC recommends that R&R take steps to ensure robust internal communication between R&R and the Centers to convey significant, pending R&R matters, using to the extent possible, electronic means.

## **Process Improvement & Efficiencies**

### **010160**

COAC recommends, as is specified in the Trade Facilitation and Trade Enforcement Act (TFTEA), that CBP should encourage bi-directional training that enhances R&R subject matter expertise. CBP should support and encourage greater participation of R&R attorneys in training programs that are provided to Centers and/or Port personnel. R&R attorneys should also take advantage of training offered by universities, trade associations or other institutions.

### **010161**

In order to enhance and/or facilitate R&R technical expertise and greater exposure to operational matters, R&R should consider placing R&R attorneys, on a temporary duty basis, in the Centers and/or ports. This should enable R&R to be more interactive with the Centers and/or ports, and

could be done on a virtual basis, provided that the necessary electronic environment between R&R and Centers and/or ports is made available.

#### **010162**

COAC recommends, to assist in alleviating the backlog of rulings, that R&R consider offering a new option for the protestant to request an expedited sixty (60) day Application for Further Review (AFR) decision that would not result in a written published decision by R&R but would merely instruct the Center to grant or deny the protest. The use of this process would be at R&R's discretion and would be considered for future as well as pending AFRs.

#### **010163**

COAC recommends that in order to expedite the issuance of substitution drawback rulings under the Trade Facilitation and Trade Enforcement Act (TFTEA), R&R should leverage the expertise of the National Commodity Specialist Division (NCSA) as appropriate.

### **Automation, Innovation & Visibility**

#### **010164**

COAC recommends that CBP and R&R devote resources to develop an automated process/system for the submission, processing and dissemination of all types of ruling requests and decisions.

#### **010165**

COAC recommends that CBP provide funding for R&R to develop a web based, end to end case management system. This system should contain functionality that, at a minimum: receives the submission of ruling requests, creates records of such inquiries, enables the submitting party to check status and receive major milestones of case processing, records and disseminates and publishes the ruling or decision once the ruling or decision is final.

In the interim R&R should notify the inquiring party of major milestones including case received, case assigned, awaiting information, in process, and decision rendered. Leveraging current document imaging functionality, R&R should provide a mechanism to receive ruling requests electronically via email and once the decision or ruling is rendered, email a copy to the inquiring party.

### **CROSS Rulings Database**

#### **010166**

COAC recommends that R&R, in conjunction with OIT, research what enhancements could be made to the CROSS system search and notification/alert features, as commercially permissible.

## **Binding Ruling Requests & Reasonable Care**

### **010167**

COAC recommends that its proposed Mitigation Guidelines Working Group address with R&R whether the pendency of a response to a prospective ruling request affects a determination as to whether the submitter exercised reasonable care.

## **EXPORTS SUBCOMMITTEE**

### **010168**

With regard to the data element “Name of Exporter”: The exporter is not a party that is captured by transportation documents or carrier manifests.

Therefore, it is recommended that CBP change the name of this data element name to "shipper name".

Additionally, the US definition of shipper is not in line with the WCO definition for the equivalent data element "consignor", nor with the Canadian definition of “shipper”, both of which designate the proper party to be that which is shown on the bill of lading / shipping document / transport contract.

COAC recommend that CBP change its definition of shipper name to “the name of the party shipping the goods as shown on the Bill of Lading (BOL)/shipping document.” This recommendation applies to the manifest systems, import and export, for all modes of transport.

Furthermore, because truck BOLs are not standardized, COAC recommend that CBP provide guidance regarding which of the potential fields on a truck BOL contains the proper party to be submitted as the shipper element.

### **010169**

As the next step of the process, COAC recommend that CBP clearly delineate and define all truck export manifest data elements such that they are suitable for determining IT requirements, and develop a comprehensive explanatory spreadsheet of the US export manifest data elements that also references them to the import manifest data elements of Canada and Mexico.

### **010170**

It is understood that CBP may wish to allow or encourage and potentially in the future even require the submission of additional data elements. However, it is problematic when CBP makes provision for such new elements by expanding the definition of an existing data element, instead of creating a new data element with its own clear definition.

One example is the shipper data element, the definition of which has been proposed to include “an identification number that will be a unique number to be assigned by CBP upon the implementation of the Automated Commercial Environment”. However, a carrier is unlikely to find this future CBP identification number in the shipper name field of the transport document. Similarly, with the data element “Cargo Description”, along with “detailed description of the cargo”, CBP has also included in the definition the 6-digit level of the Harmonized Tariff

Schedule. But a plain language description of the goods and an HTS classification are two different things.

We believe that this “definition expansion practice” leads to a lack of clarity in data element definitions, is a hindrance to international harmonization, and is impractical with regard to IT programming and cargo documentation practices.

We therefore recommend that, as a standard future practice, if CBP wishes to provide filers the option of transmitting additional information, that this information be delineated as new, clearly-defined data elements. This recommendation applies to the manifest systems, import and export, for all modes of transport.

With regard to specific truck manifest data elements, we recommend that CBP remove

1) the identification number item from the definition of shipper and

2) the HTS reference from the definition of cargo description, and instead include them as a separate, new, optional data element to be provided in new, separate fields of a message.

#### **010171**

With regard to the data element of “consignee”, the carrier has information on only one party: that who is listed on a transportation bill as the consignee.

- We therefore recommend that CBP delete the truck export data elements “ultimate consignee” and “intermediate consignee”, and replace these with a single data element: “consignee”.
- We further recommend that this “consignee” data element should be defined in alignment with the WCO SAFE Framework and Canada e-manifest definitions of “consignee” as the name of the party to whom the cargo/goods are being "shipped to" or “consigned” as shown on the Bill of Lading or shipping document. This recommendation applies to the manifest systems, import and export, for all modes of transport.
- Similar to “shipper” above, because truck BOLs are not standardized, we recommend that CBP provide guidance regarding which of the potential fields on a truck BOL contains the proper party to be submitted as the consignee element.

#### **010172**

With regard to the data element “Name and Address of the Notify Party”, CBP has defined this as “the name and address of the party to be notified as specified in the carrier's/freight forwarder's contract of carriage or commercial sales.” The carrier, however, does not have access to commercial information.

- COAC therefore recommended that CBP remove any reference to commercial sales documentation from the definition. Furthermore, customers do not always provide a notify party, therefore this data element should be designated as "conditional", with further delineation needed regarding when it is mandatory.

**010173**

With regard to the data elements “Port or Place of Unloading” and “Place where the cargo was accepted”, COAC recommend that CBP define these in alignment with similar Canada CBSA e-manifest data elements, and make them conditional, to be required only when these places differ from the information provided in the consignee field for place of unloading, or the shipper field for place where the cargo was accepted.

**010174**

With regard to the data element carrier code, we recommend that CBP coordinate closely with CBSA to ensure that a system of "look-up" tables are in place for both manifest systems in order to translate between US and Canadian carrier codes.

**010175**

With regard to the data element “Trip number or Unique Consignment Number”, we recommend that these be listed as two separate data elements, with the definitions aligned to those found in the Canada e-manifest system.

**010176**

With regard to the data element cargo quantity, it is understood that CBP wants the lowest level piece count, and that carriers should employ due diligence to transmit accurate data in this regard. However, it is sometimes impossible for a carrier to determine whether or not the piece count provided to it by a shipper is accurate.

- Therefore we recommend that, as per the Trade Act, CBP ensures that the policy interpretation of this element provides that carriers should be able to reasonably depend upon the information provided to it by shippers, and that CBP direct any enforcement actions toward shippers who are providing inaccurate information to carriers.

**010177**

With regard to Hazmat, we recommend 1) that CBP align with the Canadian designation of the UN number as the required Dangerous Goods Code element, unless no UN # exists for the commodity involved, and 2) that the data element Chemical Abstract Service ID Number be eliminated or made optional.

**010178**

With regard to the data element AES ITN or AES Filing Exemption Code, we recommend that all of the possible citations utilizing the expected codes should be provided for review.

**010179**

With regard to the data elements “license code”, “export control classification number”, and “License or Permit Number”, we note that all of these are commodity elements, not related to the transport contract that is the basis of the manifest. We also note that the Automated Export System should already capture all of these data fields attached to an ITN, therefore to also require them on the manifest would be duplicative.

- COAC therefore recommend that CBP remove these elements from the truck manifest data element list, and that the issuance of an ITN be used as a “one-stop shop” for

validation of these and any similar commodity-related data elements. This recommendation applies to the export manifest systems for all modes of transport.

#### **010180**

With regard to data elements related to split shipments, COAC recommend that CBP undertake an evaluation to determine whether the government has a compelling interest in carriers providing detailed split information, such as number of pieces on a given conveyance, on the export manifest. This recommendation applies also applies to the rail and air export manifest systems.

#### **010181**

With regard to promoting seamless intermodal transport, the Canadian highway e-manifest system includes a field in which the filer can provide an ocean bill of lading number. The US truck data element list does not include this field. We also note that ocean-to-truck is not the only possible intermodal transfer; particularly across the northern border, air-to-truck (and vice-versa) transfers are standard practice.

- COAC therefore recommend that CBP include a data field for the provision of a bill of lading identifier from another mode of transport in all of its export manifest systems, including air, ocean, rail and truck, to provide a mechanism to link together information for the same shipment that has been filed in different systems under different bill numbers.

#### **010182**

The current process by which conventional carrier air shipments exported from the US by truck are reported to customs today is inefficient and burdensome. Known as “flying trucks”, these are trucks that operate under air carrier flight numbers and carry shipments travelling under an air waybill, including shipments that have entered the United States by air and are being exported to Canada by truck, and those that originate in the United States and are exported by truck, and are then transferred onto an aircraft in Canada for export to a third country. As the automated truck manifest is developed, we recommend that CBP develop an airline/truck dual-filing, dual-manifest approach, in which 1) air carriers – via the Air Export Manifest System – provide CBP with data on the house and master bills departing on an airline flight-number-identified truck, and 2) truckers – via the Truck Export Manifest System – provide CBP with the required truck specific data elements, so that 3) CBP can link the two data submissions together behind the scenes.

#### **010183**

Express air shipments moving multimodal (ground-to-air and air-to-ground) on trucks across the Northern and Southern Borders, commonly referred to as "Flying Trucks", are still required to stop at the border to present paper In-bond documents. This includes shipments exporting from an FTZ. The current manual processes result in inefficiencies and service delays.

There are a number of disparities/gaps in functionality today, such as

- Air Manifest-originated In-bonds can be closed in QP/WP, but QP-originated In-bonds cannot be closed in Air Manifest, and most carriers and many forwarders use only Air Manifest.



- For shipments moving entirely by air, Air Manifest can be used to electronically arrive and close all In-bonds, but this electronic capability disappears once a shipment moves to a different mode. The same “full-electronic” capability should exist in all modes of transportation, including inter-modal moves.

To automate In-bond processes, full and robust ACE functionality must be adopted to open, arrive (e.g., transmit an ASN 3 message) and close/export (e.g. ASN 7 message) all transportation In-bonds, including those for shipments moving inter-modally.

- We therefore recommend that functionality be incorporated into in Air (import) Manifest, QP/WP and the new export manifest systems (air and truck) so that all In-bonds, regardless of the modal or functional (e.g., ABI versus manifest) ACE system in which they were originated, can be electronically arrived and exported. The new functionality must include the ability to create - in the manifest system - electronic In-bonds for export shipments originating from an FTZ, and the ability to use both CBP 4-digit port codes or three-letter airport codes in all ACE applications to enable creation and arrival/export of In-bonds.

#### **010184**

Keeping in mind CBP’s need to conduct adequate pre-departure manifest targeting for export shipments, we recommend that CBP do all possible to preserve existing benefits for trusted traders as the truck export manifest system is developed. In particular, we recommend that account-based programs be leveraged to preserve the exemption for pre-departure manifesting for trusted trader participants in the Canadian Customs Self-Assessment program, and that similar benefits be provided for participants in the Operadora Economica Autorizada (OEA) program for Mexico’s trusted traders across the southern border.

**August 23, 2017**

#### **TRADE MODERNIZATION SUBCOMMITTEE**

#### **International Engagement & Trade Facilitation**

#### **Publication and Availability of Information**

#### **010185**

COAC recommends that CBP work with customs administrations to implement publication, access, and availability of information to provide transparency and to encourage that such information is available in English to include making the HTS and relevant customs and trade laws and regulations available on-line. While some countries have made significant strides in trade facilitation efforts, there is still a lack of publication of all fees and charges, and information that relates to customs and trade issues remains unavailable.

#### **010186**

COAC recommends that customs administrations should readily update the trade community with current laws and regulations by way of public websites and other appropriate social media. This should include appropriate contact information on specific issues related to customs and trade. Such information should be presented in a very practical and easy to understand manner or guide to traders. For instance, CBP’s informed compliance publications and cargo systems

message service (CSMS) provide critical legal and operational information in a very comprehensive, clear and current manner, which increase the trade community's understanding and compliance.

#### **010187**

COAC recommends that in cases where a free trade agreement (FTA) is in place with the U.S., CBP should ensure publication of import, export and transit information consistent with FTA requirements.

### **Opportunity to Comment**

#### **010188**

COAC recommends that CBP should encourage all customs administrations to adopt a standardized formal process initiated by the government to provide opportunities for the trade to comment on new laws or regulations impacting trade. The proposed introduction or amendment of laws and regulations should be approached as a consultative process accepting input through direct formal comments from companies, individuals, trade associations and most importantly industry advisory committees. Such committees are critical in an international trade environment in which technology and trade cycles continue to accelerate. These types of committees should operate on a continuing basis to ensure that the private sector has an official venue to engage directly with the national government in advocacy efforts, and that the government can count on a trusted group of experts on which to count for input on proposed regulatory changes and other policy initiatives.

#### **010189**

COAC recommends that CBP should encourage customs administrations to adopt as a best practice for a comment period, a minimum sixty (60) day comment period with a delayed effective date of sixty (60) days at a minimum, and an additional thirty (30) to sixty (60) days when the intricacy and impact of the change requires additional time. Further, when the changes relate to system and/or automated changes an additional sixty (60) to ninety (90) days should be required to program, test, and implement.

#### **010190**

CBP should encourage customs administrations to develop a formal established commercial advisory committee comprised of members of the trade similar to the COAC and WCO Private Sector Consultative Group. Members should represent stakeholders of different sizes, involved with various commodities and playing divergent roles within the supply chain and have an impact on customs or trade matters.

### **Advance Rulings**

#### **010191**

COAC recommends that CBP should encourage customs administrations to prioritize the implementation of an advanced rulings program, including import classification, valuation, trade preference and entry related issues. As a best practice, CBP should encourage that rulings and decisions are published electronically as is the case with the U.S. CROSS rulings system.

Databases such as CROSS are searchable, up to date, and include ruling modifications and/or revocations, providing guidance to the trade community, essential to compliant business decisions

#### **010192**

COAC recommends, with regard to obtaining rulings, that the process to obtain such decisions should be transparent and consistent to simplify the process and allow for interested parties to file for a ruling. As a best practice, CBP should point towards the U.S. advance rulings program. Further, the ruling itself should provide enough information about the product and justification or rationale on how the customs administration reached the determination, to allow the interested parties to understand the underlying reasoning. The rulings programs should endeavor to include transparent timeframes for ruling issuance that keep in mind business needs.

### **Procedures for Appeal or Review**

#### **010193**

COAC recommends that CBP should advocate and share with customs administrations the U.S. best practices of administrative review and judicial appeals that include clear and transparent procedures, stipulated timeframes, etc. in trade and customs matters with uniform implementation throughout a country's territory. Access to appeal and reviews should be adequate to ensure due process. For instance, customs regulations provide for the issuance and publication of internal advice and protest review decisions that provide guidance on current, ongoing and/or past transactions that enable the trade community to receive formal clarification and guidance on critical customs and trade issues.

#### **010194**

COAC recommends that CBP share its best practices before the WTO Trade Facilitation Committee regarding advance rulings, internal advice decisions, protests and other appeal processes and procedures with the objective of establishing a global model for obtaining customs decisions that would standardize processes and procedures. It is extraordinarily burdensome and costly for multinational companies to put in place the resources that are necessary to adapt, respond to and generally manage multiple and differing decision-making procedures, including review or appellate processes.

### **Other Measures to Enhance Impartiality, Non-Discrimination and Transparency**

#### **010195**

COAC recommends that CBP encourage customs administrations to develop cohesive measures that would minimize risk and promote transparency in the process for release of detained goods, particularly about perishable goods. As a best practice CBP should encourage the laws, regulations and policy permitting the receipt and review of advance data and alerts on such shipments to facilitate decision-making by customs administrations as well as by the trade prior to and post arrival.

**010196**

COAC recommends that CBP should encourage customs administrations to consider and weigh the results of private accredited labs, even when the results contradict the ones from government labs.

**Disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation and Penalties****010197**

COAC recommends that CBP encourage customs administrations to improve transparency and consistency in fees, other customs charges, liquidated damages and penalties, making them easy to find and understand, particularly penalties for more egregious violations that could result in higher monetary amounts.

**010198**

COAC further recommends that CBP should encourage customs administrations to no longer require the consularization of documents, and certificates establishing articles of free sale or merchantability. Rather, CBP should encourage the use of commercial documents kept in the ordinary course of business, which are necessary for the transaction itself.

**010199**

COAC recommends that fees should be proportionate to services rendered. For instance, CBP should encourage customs administrations not to assess both a value added tax (VAT) and customs fee on the same transaction.

**010200**

COAC recommends that penalty regimes should be clear, understandable and not overly complex and penalties should be proportionate to the violation. Different frameworks should exist for civil versus criminal penalties. Customs administrations should recognize distinct levels of culpability as opposed to merely fraud or strict liability for any infraction especially in cases of minor breaches or clerical error. Mitigation guidelines should be transparent and easily accessible to provide for penalty resolution at amounts lower than the initial assessment. Voluntary prior disclosures should be a mitigating factor to any penalty assessment. Where bonding systems exist, customs administrations should consider issuing liquidated damages claims for breach of bond conditions in lieu of civil monetary penalties for more common entry, in bond or warehouse related violations.

**Release and Clearance of Goods****010201**

COAC recommends that CBP work with customs administrations to:

- a) Simplify procedures to reduce average clearance times;
- b) Publish predictable time frames for cargo release decisions;

- c) Introduce pre-arrival processing of import documentation;
- d) Accept electronic payments for duties, taxes and fees; and
- e) Promote release of goods prior to final determination and payment of customs duties.

#### **010202**

COAC recommends that CBP share best practices with customs administrations on pre- arrival processing, e-payment, clearance and release, simplified procedures, as well as relevant risk management and audit techniques.

#### **010203**

COAC recommends that CBP should encourage customs administrations to leverage a risk management methodology to target high-risk shipments for inspection or document requirements, decrease overall inspections to improve border efficiency, and focus post-clearance audit procedures on a risk based selective sampling methodology.

#### **010204**

COAC recommends that CBP encourage customs administrations to establish guarantees (customs bonds) to secure entry, in bond/transit, and warehousing as well as duty payment obligations and to ensure that bond amounts for security are commensurate with duty and tax risk. Furthermore, customs administrations should use bonds to provide for immediate release of cargo prior to final duty payment and other product conformity determinations, as well as to secure other obligations, including redelivery of goods. Most countries require the payment of duties, taxes and fees as well as admissibility decisions and inspection of cargo at the time of entry, which causes delays in the importation of cargo.

#### **010205**

COAC recommends that CBP encourage and share best practices with other customs administrations on developing a customs electronic bond or “e-bond” system. In the U.S., customs bonds can be filed electronically in an efficient and timely manner, which assures CBP that the import obligation is secured before an entry is made. While some countries do have a customs bond system, it is paper intensive.

#### **010206**

COAC recommends the CBP should encourage customs administrations to simplify the border process for small and medium sized businesses by achieving a commercially significant de minimis level, which reflects inflation and the modern reality of online commerce.

#### **010207**

COAC recommends that CBP share with customs administrations best practices regarding the creation and implementation of the single-window particularly in the way it facilitates trade and enhances cargo clearance.

#### **010208**

COAC recommends that CBP encourage authorized economic operator (AEO) programs that prioritize participation in new programs for traders as opposed to excluding non-participants from participation in certain programs altogether and that AEO should be accessible, functional, and meaningful for companies of all sizes. Further, CBP should work with customs administrations to establish more mutual recognition agreements (MRAs) so that such traders can limit costs and gain benefits from such programs globally in a way that does not hinder, but encourages participation. Further, CBP should hold other customs administrations accountable for such appropriate and consistent implementation COAC recommends continued cooperation among customs administrations as they develop their AEO programs with an aim towards mutual recognition of certifications and benefits.

### **Border Agency Cooperation**

#### **010209**

COAC recommends that CBP work with other customs administrations to establish within each country a national interagency entity that encourages cooperation and coordination among all government agencies with border cargo clearance responsibilities. As a best practice of interagency border cooperation and coordination CBP should reference the U.S. Border Interagency Executive Council (BIEC) that has enabled partner government agencies (PGAs) administering import and export laws, regulations and policies to collaborate with each other, CBP and the trade community on an ongoing basis.

#### **010210**

COAC recommends that CBP work through the WCO to promote a concept of a coordinated border management to be built on partnerships with other government agencies with border control responsibilities as outlined in the WCO Framework of Standards to Secure and Facilitate Global Trade.

### **Movement of Goods Intended for Import Under Customs Control**

#### **010211**

COAC recommends that CBP encourages non-U.S. customs administrations to promote the establishment of an In-bond process and to engage industry in the development of a domestic process. Any resulting In-bond program must be multi-modal and applicable to all commodities and to the extent practicable, an automated process.

### **Formalities Connected with Importation, Exportation and Transit**

#### **010212**

COAC recommends that CBP urge customs administrations in countries, which have yet to already do so, to: promote becoming part of the ATA Carnet System; secure broadest scope of coverage possible; and promote prompt action and implementation at respective domestic levels. The COAC encourages all customs administration to support full automation of the ATA Carnet system. The global gold standard for temporary admissions is the international ATA Carnet system, under the auspices of the World Customs Organization. ATA Carnets, commonly known

as “Merchandise Passports”, are tools of trade facilitation, which simplify customs procedures for the temporary importation (admission) of various types of goods. ATA Carnets are the perfect tool for exporters to move their goods internationally, allowing goods to enter the customs jurisdiction of parties to the system – duty and tax free for a period of one year.

#### **010213**

COAC recommends that coupled with the development of robust risk-based systems, CBP should work with customs administrations in conjunction with the WCO to reduce, simplify and standardize the number of documents and data elements required for import and export of goods. CBP should work with customs administrations to avoid the current practice of duplication of electronic documents and paper copy requirements. COAC recognizes that some countries have regulatory provisions to accept electronic transmissions, yet have not implemented these practices or they have adopted practices requiring paper documents and signatures of the same document. Further, CBP should work with customs administrations on capacity building, electronic data exchange, and automation of border processes to lessen the burden connected with formalities in import/export operations. Specifically, we encourage CBP to work with customs administrations to achieve a uniform data collection process with the goal of reducing the paper documents and duplication.

#### **010214**

COAC recommends that CBP work with customs administrations to reduce the incidence of signatures on import, export, and transit documents. When signatures are required, customs administrations should accept copies of the document along with the signature. CBP also should encourage acceptance of electronic signed documents in lieu of paper including for domestic transit. Further, customs administrations should not require documents to follow or travel with the goods upon release and should eliminate such requirements and automate the process. Documentary requirements should not impede lawful transshipment of goods. CBP should encourage customs administrations to avoid increased requests for documentation in addition to commercial invoices as “proof of purchase” for shipments of physical goods.

#### **010215**

COAC recommends that CBP encourage customs administrations to adopt, in a uniform manner, an informal (consolidated) entry process for lower value shipments. COAC recognizes that in the express environment some countries do not provides for such processes.

#### **010216**

COAC recommends that CBP encourage customs administrations and partner government agencies to develop the necessary internal expertise to diminish and where practicable eliminate reliance on pre-shipment inspection and/or third-party verification practices that cause unnecessary cargo delays and additional costs to traders.

#### **010217**

COAC recommends that CBP share its best practices for bringing goods into compliance, specifically through a process that allows companies to import merchandise into secure, bonded areas, e.g. bonded warehouses and/or free trade zones, to bring merchandise into conformity with product labeling or other admissibility requirements.

**010218**

COAC recommends that CBP encourage customs administrations to administer an international labeling standard. Currently labeling requirements are country specific and some requirements are so specific that they require specialized labeling procedures to occur as a separate process after the initial product manufacture and packaging thereby creating extra cost, time and potential issues in the supply chain.

**010219**

COAC recommends that CBP encourage customs administrations to adopt, as practicable, more uniform and transparent procedures and processes among various ports and districts. In many cases port specific practices exist that hinder the flow and clearance of lawful commerce. Furthermore, internal customs ports and/or administrative offices should utilize consistent versions of customs automated systems to promote transparency and uniformity to traders.

**010220**

COAC recommends that to the extent practicable, CBP should encourage customs administrations not to restrict clearance and/or inspection of certain classes of merchandise to specific ports of entry or geographic locations. Further, customs administrations should leverage technology where possible to allow for centralized clearance and inspection capability for all commodities.

**010221**

COAC recommends that CBP encourage customs administrations to evaluate and consider programs that increase uniformity and create further efficiencies to apply common customs procedures at all ports of entry. As a best practice, the U.S. has centralized post-release procedures under CBP's Centers of Excellence and Expertise (CEEs) that have dramatically improved efficiencies and standardized processes for U.S. importers. Further, the Remote Location Filing (RLF) program in the U.S. allows for electronic remote filing for release at all ports of entry, no longer confining transmissions and filings to local or regional ports.

**Freedom of Transit****010222**

COAC recommends CBP encourage countries not to impose unnecessary fees for the movement of in-transit goods including those relating specifically to instruments of international trade.

**Customs Cooperation****010223**

COAC recommends that CBP encourage customs administrations to promote compliance through outreach such as webinars, symposiums and to develop informed compliance publications. Additionally, CBP should encourage customs administrations to share information about organizational structure, including contact information of government officials.



**010224**

COAC recommends that the sharing of import and/or entry information should be consistent with the purposes of ensuring effective customs control and “data discipline” over the exchange of such information, particularly the release of proprietary information.

**Other Trade Facilitation Recommendations****010225**

COAC recommends that CBP encourage other customs administrations to expand public private partnerships with national trade facilitation committees including the Global Alliance for Trade Facilitation and others.

**010226**

COAC recommends that CBP work with the Asia/APEC region, including China, Indonesia, Vietnam and the Philippines to encourage more transparent and streamlined processes and procedures involving phytosanitary certifications and/or requirements that often unreasonably delay clearance.

**010227**

COAC recommends that CBP encourage other customs administrations to develop processes that enable the free flow of goods, such as standardized customs data and expanded hours of full operation at border crossings, to greatly expand intra-Africa trade. This will help reduce the cost of intra-Africa distribution which is beneficial in attracting new businesses. Customs improvements will also allow companies to better implement business models which are based on reliable delivery networks including guaranteed and time-definite deliveries.

**010228**

COAC recommends that CBP consult with other customs administrations to identify and share best practices on enforcing anti-dumping and countervailing duty (AD/CVD) laws and regulations including the benefits of a worldwide, uniform system for calculating and assessing AD/CVD margins on a prospective basis during all aspects of the investigation including administrative reviews.

**010229**

COAC recommends that CBP share best practices with other customs administrations to operate under a heightened level of IPR enforcement and implement IPR reforms within their legal structures to effectively emphasize deterrents such as civil, administrative and criminal penalties. For instance, as a best practice CBP should share its National IPR Center model that provides a focused resource to strengthen and improve IPR enforcement and prevent illicit activity. The National IPR Center and its Report IP Theft campaign also has encouraged open collaboration to develop intelligence by industry sector leading to increased IPR seizures.

## **Trade Policy**

### **010230**

COAC recommends, in light of the U.S.' withdrawal from the Trans Pacific Partnership, that CBP maintain continued engagement with Asian customs administrations to promote U.S. exports and jobs.

## **TRADE MODERNIZATION SUBCOMMITTEE**

### **E-commerce / Section 321:**

#### **Filing Partner Government Agency (PGA) data**

### **010231**

In order to promote a level playing field and not impair the flow of legitimate commerce, COAC recommends that CBP, in conjunction with the PGAs, should adopt policies or requirements that generally would not limit, encourage or require section 321 filings to a certain class or group of service providers.

### **010232**

The COAC recommends CBP provide section 321 filing capability in ACE for ACE filers and that automated solutions, including the ability to file PGA data, should be available in ABI.

### **010233**

The COAC recommends CBP provide section 321 filing capability in ACE for ACE filers and that automated solutions, including the ability to file PGA data, should be available in AMS.

## **Data Elements**

### **010234**

COAC recommends that CBP should collaborate with the Trade to ensure that shipments released using section 321 subject to PGA review have the necessary data elements/data sets required for CBP and the PGA to release cargo consistent with the risk and targeting standards aligned with the agencies missions, and to safeguard public health and safety of the American consumer.

### **010235**

COAC recommends that CBP in conjunction with the PGAs clarify publicly to the Trade whether a merchandise description only or alternatively an HTSUS number is recommended or required for section 321 importations. Additionally, should CBP and the PGAs recommend or require an HTSUS number it should clarify the circumstances where an HTSUS is recommended or required, e.g., in all cases, in cases of revenue or fees, or when required by PGA's for admissibility determinations, and prior to arriving at this determination consult COAC.

## **Process to determine section 321 eligibility:**

### **010236**

COAC recommends that CBP should collaborate with the Trade to ensure they have an adequate

process in place, and/or an automated solution to determine if a shipment is subject to PGA admissibility requirements or not, and if it is in fact eligible for section 321 clearance.

## **Guidance and collaboration between Government and Trade**

### **010237**

COAC recommends that CBP work with the partner government agencies (PGAs) to encourage each PGA, who has not yet done so at the time of these recommendations, to clarify publicly to the Trade whether section 321 imports require a data set as they do for entry types 01 or 11 for cargo release. If the PGA will not require the submission of PGA data for such shipments, exempting section 321 importations from PGA review, then the COAC recommends that they state this policy in writing. COAC recommends that CBP engage the BIEC for additional outreach and coordination efforts to obtain such clarification.

### **010238**

COAC recommends that CBP and government agencies that currently require the payment of duties or fees, e.g., antidumping and countervailing duties, or fees on entries, clarify publicly to the Trade whether for section 321 imports, they also will require such duties and fees, or consider them exempt on section 321 importations.

### **010239**

COAC recommends further, if CBP and/or the PGAs, determine certain data elements for admissibility or revenue/fees are required for section 321 importations CBP should establish filing requirements. In such a case, CBP should arrive at these requirements, including data elements, in collaboration with the Trade, including the COAC and the TSN to ensure minimal effect on costs and efficiencies to process section 321 importations.

### **010240**

COAC recommends that CBP and the Trade continue to work on ways to better educate and inform the trade community to improve descriptions of merchandise provided on commercial and shipping documents, including manifests, to filers of Sections 321 transactions.

### **010241**

COAC recommends that the workload staffing model that CBP currently utilizes to identify the level of officials needed to facilitate and manage the flow of legitimate cargo, include a review and determination of the additional volume of shipments that are being imported under the Section 321 limit of \$800 currently in the statute. This will ensure that CBP address the new and different flows of commerce enabled under the statute in an efficient and comprehensive manner

## **Responsible party for enforcement and trusted party for facilitation benefits:**

### **010242**

Rather than identifying a particular party that categorically should be liable or responsible for the appropriate and accurate filing of Section 321 imports, CBP should clarify publicly to the Trade existing laws and regulations such as those relating to risk-based cargo release, product admissibility, manifesting cargo, intellectual property, commercial negligence/fraud, etc. that

provide CBP with the ability to hold various parties responsible for the accuracy of such transactions. The COAC recommends that CBP should also consider those parties who have the primary financial gain due to the sale of the goods and/or knowledge about the nature of manufacture, country of origin, or admissibility of the product or goods. Further the COAC recommends a continued dialogue on this issue with CBP and the Trade including this COAC Working Group.

#### **010243**

CBP should consider, in conjunction with the PGAs, providing benefits to trusted partners involved with Section 321 importations as already is the case for cargo release/entry. In particular, CBP should consider expedited processing and less targeting due to minimal risk associated with such transactions when there is additional processing or screening performed. CBP should leverage COAC as a resource in future discussions on this topic.

### **ONE U.S. GOVERNMENT AT THE BORDER SUBCOMMITTEE**

#### **ACE Related:**

#### **010244**

COAC recommends expanding reporting capabilities in ACE to accommodate and include the PGA data elements transmitted in the corresponding PGA message set.

#### **010245**

COAC recommends modifying the ACE account structure to provide ACE participants with visibility to and reporting on all transactions where they are listed as an “entity” to the transaction, including as Foreign Supplier Verification Programs (FSVP) importer, consignee, etc.

#### **010246**

To ensure uniformity and accuracy of foreign currency conversions the COAC recommends that CBP provide currency tables in ACE/ABI, consistent with the objective to transition all legacy ACS functionality into ACE/ABI.

#### **010247**

COAC recommends that CBP work with the 1USG subcommittee to review, develop, and draft ACE disaster recovery and national downtime procedures.

### **Fish & Wildlife Service Working Group:**

#### **Interim Pilot Recommendations:**

#### **010248**

Regarding the interim pilot, the COAC recommends that CBP work with Fish and Wildlife to:

- Include small, medium and large importers as part of the pilot.
- Exclude type 06 entries (FTZ –Foreign Trade Zone weekly withdrawals) from the interim pilot.
- Engage the COAC and trade the opportunity to provide recommendations, as

needed, in regards to policies and procedures prior to the publication of the revised Implementation Guide.

- Once the pilot begins, engage the COAC and trade to evaluate the pilot and provide feedback for long term solutions.

#### **010249**

Regarding Outreach and Education, the COAC recommends that CBP partner with Fish and Wildlife to increase its overall outreach and education with the trade by:

- Further integrating FWS into the Centers of Excellence and Expertise. The Centers have much knowledge about the importers that are managed within the CEE. Increased collaboration between the CEEs and FWS could allow better targeting and resolution by FWS.
- Requesting FWS host additional webinars to the trade on the upcoming interim pilot and other information pertinent to the trade.
- Inviting FWS to attend other industry conferences and provide updates as part of the actual sessions at these conferences.
- Inviting FWS to participate in “trade days” at the ports of entry to disseminate information.
- Requesting FWS host webinar and training sessions communicating requirements to overseas companies that export to the United States
- Requesting FWS to further enhance and simplify their website, adding links to provide key information to importers, Customs brokers and any trading partners who bring goods subject to Fish and Wildlife into the United States, e.g. fact sheets and FAQs.
- Requesting FWS work together with the trade to further develop a FWS on-line tool that will enable traders to understand whether a product is subject to FWS.

### **Long Term Recommendations**

#### **010250**

The COAC recommends CBP work with the Fish and Wildlife Service to adopt the same “Hold Intact” concept used by the Food and Drug Administration (FDA) and as outlined by CBP under 19 CFR 141.113(c),(d). This would allow importers to obtain a conditional release from CBP to move cargo from the port of entry to another location of the importer’s choosing and hold the cargo intact until it is fully released by FWS or hold only those items designated by FWS that need to be held.

#### **010251**

The COAC understands that FWS is part of the Convention on International Trade in Endangered Species and Wild Fauna and Flora (CITES) committee. As such the COAC recommends that CBP encourage the FWS to participate in the CITES electronic permitting

exchange and requests a report, when able, on its efforts to implement this electronic process in the United States. This would include implementing electronic permit standards and norms in order to issue and receive CITES permits generated through an electronic permit information exchange with participating countries.

#### **010252**

The COAC understands that FWS is currently conducting a port study in relation to the Designated Port Exception Permit process. The COAC recommends that FWS provide updates to the FWS working group, as they are able, on the status, results and next steps of the port study.

The COAC recommends that CBP work with FWS to continue to look for options to support the current Designated Port Exception Permit Process.

#### **010253**

The current Harmonized Tariff System is not clear enough to determine whether a commodity meets FWS exemptions. Currently a large number of the HTS numbers flag for Fish and Wildlife (FWS). The purpose of this recommendation is to have fewer tariff numbers flagged for FWS and still allow FWS to collect necessary information. The COAC recommends partnering with FWS to request further tariff number break-outs from the appropriate parties at the International Trade Commission and CBP to address the following areas:

- Separating domesticated specimens from non-domesticated specimens
- Determining shellfish/fishery product for human or animal consumption
- Separating animal from non-animal product

The FWS working group has put together a white paper with further recommendations on tariff number break-outs.

#### **010254**

The COAC has a concern surrounding the number of HTS numbers flagged for FWS. The recommendation to further break-out HTS numbers is an effort to partner with FWS to find ways to comply with FWS' requirements, but to also reduce the number of HTS numbers flagged for FWS. The COAC recommends that in the interim, until such time as the previous recommendation is adopted, CBP work with FWS to explore flagging only those HTS numbers which require a response, and are in direct proportion to FWS' high risk HTS numbers.

#### **010255**

The COAC recommends that CBP work with FWS to create a "Compliant Trader" program for importers. FWS, together with the trade, would determine the conditions for entering and remaining in the program. This program would allow FWS to focus on importers and commodities that truly pose a risk versus those parties who have demonstrated they are a "Compliant Traders." One of the reasons for this program would be for the trade to work with FWS on how the trade can provide proof under the Y/N scenarios without providing additional data elements when disclaiming a product from filing Form 3-177.

- Example: Specifically under the “N” scenario where additional data is required to provide proof of claim, if an importer is deemed to be a “Compliant Trader,” they would not need to provide the additional data elements as they have already satisfied the proof of claim under entering the “Compliant Trader” program.
- Example: The trade recommends that FWS adopt a registry process similar to the registry process piloted by the Consumer Product Safety Commission (CPSC). This process would be made available to those importers deemed to be a Compliant Trader. This registry would allow the Compliant Importer who imports recurring SKUs into the U.S., subject to FWS and excluded from CITES, to file the information with FWS and receive a “registration” number from FWS that could be applied to subsequent shipments of the exact same SKU filed in ACE subject to FWS. This would mean that FWS has the ability to pull up the original information on file for the SKU and apply it to subsequent SKUs on entries imported with the same SKU. The “registration” number would be provided by the trade on all subsequent FWS filings through ACE when importing that SKU.

The COAC recommends that the current FWS working group scope out this process with FWS during the interim pilot. This process could possibly be utilized by other PGAs.

In addition the COAC recommends that FWS work together with CBP to align the “Compliant Trader” program with other Trusted Trader programs.

#### **010256**

The COAC has a concern surrounding the burden of proof for an exemption, specifically in relation to animal species and the requirement of additional data elements under the ‘N’ scenarios where the importer claims the product is exempt from the 3-177 form. As a result, the COAC recommends CBP partner with FWS to utilize the one letter disclaimer code that indicates the product contains certain domesticated species, as provided for in 50 CFR 14.4.

- The COAC encourages FWS to adopt the one letter disclaimer code to be used in the Interim Pilot as part of the final implementation.
- If FWS determines that the domesticated disclaimer code will not be part of the final implementation, the COAC recommends FWS support its need to obtain the genus and species information on certain domesticated species by issuing a notice of proposed rulemaking to amend 50 CFR.

### **GLOBAL SUPPLY CHAIN SUBCOMMITTEE**

#### **Pipeline Working Group**

#### **010257**

COAC recommends CBP begin a Proof of Concept Pipeline Pilot to allow Pipeline Operators to utilize a Monthly 7512 batch reporting process. CBP to consult with the Pipeline Working Group to develop the parameters of the Pilot and bonding requirements and potential expansion.

## **TRADE ENFORCEMENT AND REVENUE COLLECTION SUBCOMMITTEE**

### **010258**

COAC recommends that CBP continue to engage with the TERC Subcommittee and underlying working groups to collaborate prior to implementing any policy and/or statutory changes required by the Presidential Executive Order on Enhanced Collection and Enforcement of AD/CVD and Violation of Trade and Customs Laws, especially in the areas of heightened enforcement and increased bonding that could have a substantial impact on the trade.

### **010259**

COAC recommends that CBP work with the Department of Commerce to develop educational papers and best practices for handling critical circumstances and AD/CVD entries that have a 0% deposit rate at the time of entry. The AD/CVD Working Group also provided various updates to CBP's FAQ document and recommends incorporating some of these newer educational tools into the FAQ.

**November 14, 2017**

## **ONE U.S. GOVERNMENT AT THE BORDER SUBCOMMITTEE**

### **Technical and Operational Outages**

#### **010260**

COAC recommends CBP establish nationally coordinated uniform procedures for system disruptions regardless of port or mode of transportation, documented in writing and publicly available to the trade. The procedure should include the specific required data elements for release during a system disruption.

#### **010261**

COAC recommends CBP establish a procedure to allow software vendors and or software self-programmers to contact directly One Net support rather than going through ACE helpdesk when experiencing VPN connectivity issues.

#### **010262**

COAC recommends CBP create a communication procedure to provide an early warning notification to software vendors and software self-programmers of a potential unplanned system disruption.

#### **010263**

COAC recommends ACE Availability Dashboard be enhanced as follows:

- Provide Real-time, accurate status visibility of the processes including but not limited to - trouble with outbound queues
- Provide an alert when a status changes
- Provide visibility to categories not currently available such as: Manifest – air, sea, rail, truck, FAST; specific PGAs, e214/FTZ; statements; QPWP/In-bond; ACAS; full ISF process



- Reflect CBPs planned outages and retain historical activity

#### **010264**

COAC recommends when systems are recovered after a filer or CBP system disruption, CBP will not manually amend or back date the release date to the date of arrival.

#### **010265**

COAC recommends CBP create a pro-active review process prior to issuing liquidated damage cases for filings that may have been connected to a system disruption.

### **EXPORTS SUBCOMMITTEE**

#### **010266**

In onboarding new participants into the air, ocean and rail manifest pilots, CBP has chosen to decentralize the connectivity and testing processes to the ACE Client Reps. Unfortunately, this core and dedicated group of professionals has been and remains busy with issues stemming from mandatory ACE implementations, leaving them with insufficient time to dedicate to the voluntary export pilot. We therefore recommend that CBP's Trade Transformation Office identify by December 31, 2017 specific, non-client rep resources to dedicate to the onboarding process for new air, ocean and rail export manifest pilot participants. We further recommend that CBP stand up a dedicated export technical task force to catalog, prioritize and expeditiously resolve technical issues in order to enhance pilot progress no later than Q1/2018 (CY)

#### **010267**

There is a currently lack of business process, policy and technical documentation regarding pilot processes, in particular those which elaborate timelines, set out response expectations and protocols, and explain how pre-departure targeting and hold resolution policies and procedures will impose minimal negative impact on time-sensitive carrier operations. At the present time, potential participants literally do not know "what they are signing up for" when they join the automated export pilot. We therefore recommend that CBP prioritize the development of written pilot policies and procedures that accord with past and present COAC recommendations and the dissemination thereof in early Q1/2018 (CY) to those who have expressed interest in pilot participation.

#### **010268**

In order to confirm mutual understanding and allow productive industry- government discussion of any issues requiring resolution, we recommend that CBP promulgate a high-level regulatory "strawman" for each mode of transport that sets forth CBP's vision of how automation will transform the export manifest regulatory regime and the planned structure of the new regulatory approach no later than the end of Q1/2018 (CY).

#### **010269**

We recommend that CBP enable the earliest possible transmission of 1) ocean house-level bills of lading by NVOCCs, and 2) house air waybills by Indirect Air Carriers (IACs) (freight forwarders that tender cargo to an air carrier), to facilitate early CBP risk assessment and

shipment interception prior to the consolidation of cargo at inland ports / non- gateway airports and/or at ports/airports of export.

#### **010270**

In the ocean mode, in order to align with CBP's ocean import filing deadline and with the import manifest filing deadlines established by the EU and other jurisdictions to which US export cargo is destined, we recommend that the latest submission time for export ocean bills of lading (including straight, master and house bills) be set at 24 hours prior to vessel loading at the port of exportation.

#### **010271**

In the air mode, we recommend that the latest possible submission time for 1) house-level air waybills by the IAC, and/or the IAC's agents, and 2) simple bills by shippers, IACs, carriers and/or their agents be harmonized with U.S. Census requirements for AES submission for air shipments.

#### **010272**

In the air mode, we recommend that CBP facilitate the earliest possible filing of master-level air waybills by IACs and/or air carriers, and that the latest possible submission time for master-level air waybills be established as prior to aircraft departure from the US.

#### **010273**

In the air mode, as all necessary data for shipment risk assessment will be provided via house, simple and master air waybill transmissions prior to departure, we recommend that the flight-level manifest be utilized by CBP only as a tool for reconciliation and confirmation of the date and port of export, and not as an element of export targeting.

#### **010274**

Recognizing the multiple variables impacting flight capacity and the last- minute nature of flight loading and manifesting, and therefore the need for air carriers to complete post-departure reconciliation prior to transmitting flight-level data, we recommend that the submission timeline for the flight-level manifest be set at several hours after flight departure. We further recommend that an additional 3 business days be provided during which carriers may amend the flight-level manifest transmission without penalty.

#### **010275**

Air – Linking the AES Filing Record to the Export Manifest: For air export shipments that require AES filings, we recommend that CBP and Census link the USPPI's AES filing to the export manifest filing by requiring the USPPI to provide the ITN, AES Downtime citation, or AES Post Departure citation:

- For consolidations, to the Indirect Air Carrier (IAC) (the forwarder that issues the house bill that will be consolidated under an air carrier's master bill), and further that the IAC be required by CBP to include the AES ITN or Downtime / Post Departure citation in its house bill filing to ACE;

- For straight (direct) shipments, to the air carrier, and further that the air carrier be required by CBP to include the AES ITN or Downtime / Post Departure citation in its straight air waybill filing to ACE.

#### **010276**

Ocean – Reporting AES exemption/exclusion citations: For ocean export shipments that are exempted or excluded from AES filing requirements, we recommend that CBP and Census require the USPPI to provide the 3-character alpha-numeric code that corresponds to the correct exemption or exclusion legend (per the CBP/CENSUS exemption/exclusion code table) to the carrier that issues the lowest level bill of lading. Furthermore, we recommend that CBP require the carrier that issued the lowest level bill of lading to include this three-character exemption code in its bill of lading filing to ACE.

#### **010277**

Air – Reporting AES exemption/exclusion citations: For air export shipments that are exempted or excluded from AES filing requirements, we recommend that CBP and Census require the USPPI to provide the 3-character alpha-numeric code that corresponds to the correct exemption or exclusion legend (per the CBP/CENSUS exemption/exclusion code table):

- For consolidations, to the IAC, and further that the IAC be required by CBP to include the AES exemption/exclusion citation in its house bill filing to ACE;
- For straight (direct) shipments, to the air carrier, and further that the air carrier be required by CBP to include the AES exemption/exclusion citation in its straight air waybill filing to ACE.

#### **010278**

Air and Ocean – Linking House Bills to Master Bills): In order to link NVOCC-issued house bills to their corresponding VOCC-issued bills of lading, and IAC-issued house air waybills to their corresponding master air waybill, we recommend that CBP require NVOCC and IAC house bill filers to include the master bill of lading / air waybill number in every house bill filing (as is done today in the ACE M-1 Ocean and Air Import Manifest Systems).

#### **010279**

NVOCC visibility: In order to provide NVOCC master loaders with the necessary visibility to ensure that they have met all filing requirements, we recommend that CBP include a new ocean manifest required (conditional) data element for house bills: the master loader reference number. Specifically, when a co-loading non-master loader transmits its house bill(s) of lading to CBP, it would be required to include the master loader's bill reference number. This will allow the master loader to verify that all house bills under a given master bill have been properly filed

#### **010280**

Following significant industry discussion with CBP and Census, and a survey of ACE user preferences, the trade has selected a new nomenclature of 3-character codes for AES exemptions/exclusions that are more-rationally derived from the corresponding paragraph citations found in the Foreign Trade Regulations. We recommend that CBP and Census adopt

this mutually-agreed upon new nomenclature system as soon as possible, ensure that the ACE export system is expeditiously updated with the new nomenclature, and provide broad notice to pilot participants and the trade community overall about 1) the future requirement to identify AES exemptions/exclusions via 3-character codes instead of FTR paragraph citations, and 2) the change in the 3-character nomenclature from that currently programmed to the new trade-approved codes.

**TRADE ENFORCEMENT & REVENUE COLLECTION (TERC) SUBCOMMITTEE**  
**Anti-Dumping and Countervailing Duty (AD/CVD) and Bond Recommendations**  
**010281**

To support increased screening, COAC recommends that CBP require live entries for AD/CVD shipments in the following instances:

- a. An importer with a previous unresolved instance of non-payment of AD/CVD at the time of entry summary.
- b. An importer does not pay an increased duty bill within 60 days of issuance unless there is a valid protest issue which can be filed within 180 days of issuance.

COAC also recommends that CBP establish and publicize its policy for removing an importer from live entries once they have rectified any payment problems and/or demonstrate the importer was not at fault for any late file or payment (i.e., due to a technical or processing error).

**010282**

To support increased bonding for AD/CVD shipments, COAC recommends that CBP establish a separate supplemental AD/CVD Bond available as a Single Transaction or Continuous Bond. The supplemental bond should have a separate Activity Code and be required to secure the potential shift in AD/CVD rates for active AD/CVD Orders (estimated 420 active AD/CVD Orders). The TERC Subcommittee will be providing CBP with a white paper that provides recommendations on how the supplemental AD/CVD Bond would be calculated and automated as an e-Bond in ACE.

**010283**

COAC recommends that CBP provide additional data and information to sureties to support more robust underwriting of Customs Bonds for AD/CVD, including:

- a. Expansion of the Automated Surety Interface (ASI) data to include entry summary line item detail and AD/CVD 10-digit case number so sureties can properly manage and underwrite the risk and help counter AD/CVD evasion.
- b. Visibility to flagging the AD Reimbursement Statement in ACE as required by 19 CFR 341.402(f), or in the alternative immediate notification if the AD Reimbursement Statement is not filed with the Entry Summary. This could be accomplished through having the surety as a Secondary Notification Party (SNP) and/or updating the Bond Sufficiency Notification with additional flagging.

- c. Improving the functionality and information available in the ACE surety portal, especially as ACE migrates to a paperless environment sureties will need to rely on visible access to data and information via the surety portal account.

The above automation is possible due to the creation of an e-Bond module in ACE and should not require additional funding. These changes can be made as part of the ASI conversion to ACE scheduled to deploy on February 2018.

#### **010284**

COAC further recommends that CBP provide the following notifications to sureties to help manage the potential risk of importer default to CBP:

- a. Importers placed on sanction by CBP and when they are put on live entry
- b. Importers who immediately default on payment of Periodic Monthly Statement
- c. Real time notification of Debit Vouchers
- d. CBP Form 29-Notice of Action
- e. CBP Form 4647 Notice to Redeliver Merchandise
- f. Prior Disclosures related to non-payment of ADD/CVD

All of the above information can be provided to sureties in an automated fashion due to the creation of an e-Bond module in ACE. The e-Bond module provides CBP with the ability to include additional data elements electronically via real time messaging, SNP or at a minimum paper copy of notices if not currently automated in ACE.

#### **010285**

COAC recommends that CBP provide sureties with the ability to add and maintain current names and addresses of importers, which are often verified through the underwriting process.

#### **010286**

COAC recommends that CBP monitor accumulation of estimated AD/CVD amounts accruing on unpaid monthly statements against the amount(s) of the bond(s) securing the payment to ensure bond sufficiency.

### **Forced Labor Recommendations**

#### **010287**

COAC recommends that CBP continue to actively engage with the DHS Interagency Group as a best practice for cross-agency collaboration to improve forced labor enforcement and facilitation. COAC further recommends that CBP continue to include the COAC Trade Co-Chairs for the Forced Labor Working Group (FLWG) to ensure bi- directional feedback from all government agencies and non-government stakeholders.

#### **010288**

COAC recommends that CBP work with the DHS Interagency Group to co-create a “U.S. Goods Forced Labor Accountability Matrix” that will also outline the different government agencies involved with efforts to combat forced labor overseas to better understand each of their roles, responsibilities, and authorities. This Matrix is a high priority for the trade and should be reviewed with the Forced Labor Working Group prior to the next COAC meeting.

#### **010289**

COAC appreciates CBPs efforts to implement the Forced Labor Working Group’s (FLWG’s) prior recommendations, especially the recent issuance of an updated Informed Compliance Publication. As CBP continues to self-initiate and enforce forced labor allegations, COAC recommends that CBP seek additional feedback from the FLWG on how CBP Form 28 Requests for Information (CBPF 28 requests) are being handled uniformly at all centers of excellence and expertise. For example, some requests are more akin to an audit of an importer’s entire supply chain and sourcing factors rather than a request for information related to one set of transactions and/or supplier. Instructions must be clear so importers know how to properly and timely respond to CBPF 28 requests.

#### **010290**

COAC recommends that CBP publicize ongoing work to address and combat forced labor including other metrics besides Exclusions or WROs, such as:

- a. Number of imports examined for potential forced labor violations
- b. Number of shipments detained, denied entry, and/or seized due to forced labor
- c. Number of self-initiated cases and CBPF 28 requests.

#### **010291**

COAC recommends that CBP conduct additional outreach using a variety of methods, such as:

- a. **Small and Medium-Sized Businesses Campaigns.** These companies may not have a compliance department, and there is a need to educate owners or transportation managers. CBP can do so by publishing bulletins and blogs, conducting and recording webinars and FAQs, and working with the Small Business Administration and U.S. Chamber of Commerce to expand outreach.
- b. **C-Level Executive Campaigns.** CBP can do so by implementing campaigns that focus on WRO case studies and enforcement metrics similar in nature to AD/CVD and IPR statistics that are publicized on a regular basis.
- c. **Public Outreach:** Continue to publicize the ability and process to report forced labor allegations via e-allegations and the personal/financial reward for doing so.

#### **010292**

COAC recommends that CBP continue to have the Forced Labor Working Group (FLWG) act as a standing forum of subject matter experts that can be called together by CBP when any

forced labor issues arise to solicit feedback and advice from the trade and all stakeholders within the FLWG.

**February 28, 2018**

#### **TRUSTED TRADER SUBCOMMITTEE**

##### **010293**

CBP engage a large group of industry to socialize the CTPAT MSC in a public comment forum, with sufficient timeline to enable feedback and consolidation before finalizing the new MSC. This would function similar to a regulatory comment period and further the co-creation process. Comments received from industry should be considered, and the MSC should be updated appropriately, to ensure that CTPAT meets the shared goal of security and trade facilitation. The comment period should be flexible and no implementation should move forward until this is complete.

##### **010294**

Simultaneously, CBP should encourage companies to provide feedback on additional tangible benefits for participation in the program.

#### **EXPORTS SUBCOMMITTEE**

##### **010295**

**Targeting Regime:** Based on the success of the Air Cargo Advance Screening pre-departure targeting strategy, we recommend that CBP structure its export targeting system in a manner that maximizes the early targeting of export shipments while simultaneously ensuring that the national security concerns of the United States are fully accounted for. In particular, we recommend that CBP utilize the export pilot period, in close collaboration with pilot participants and other industry representatives, to, first, test out various methods for accomplishing the earliest possible targeting of export shipments, and second, accurately measure the impact of late targeting of cargo carrier operations and the movement of legitimate cargo in order to facilitate a proper cost-benefit analysis for the regulatory rule-making process.

##### **010296**

**Hold Regime:** Similar to early targeting, the success of the automated export manifest will also depend upon the ability to intercept shipments requiring inspection at the earliest possible point, prior to consolidation taking place. We therefore recommend that CBP utilize the export pilot period, in close collaboration with pilot participants and other industry representatives, to examine potential mechanisms to empower early inspection and the ability of forwarders and carriers to have input into the location for inspection, and to test the best candidates in real time.

##### **010297**

**Account Management for Manifest Compliance:** Air carriers have long requested centralized account management with regard to carrier compliance with manifest requirements. As air will soon be subject to three individual electronic manifest regimes – import manifest, Air Cargo Advance Screening, and export manifest, the drumbeat for account management will only increase. We therefore recommend that, as an integrated part of the air automated export pilot,

CBP and 2-3 volunteer air carriers engage in a proof of concept for account management of carrier manifesting compliance.

#### **010298**

**Post Departure Filing:** COAC recommends that

- CBP work with Census and carriers participating in the automated export manifest pilot to identify Post Departure Filers to participate in testing during the manifest pilot
- CBP begin to utilize, in the nearest possible timeframe, the export pilot to validate the concept of a low risk exporter program as put forth in the Post Departure Filing proposal.

#### **TRADE ENFORCEMENT & REVENUE COLLECTION (TERC) SUBCOMMITTEE** **010299**

In support of recommendation #010282 to establish a separate supplemental AD/CVD Bond, COAC recommends that CBP pilot the proposed bond formula with surety members of the Bond Working Group prior to implementing any regulatory changes to meet Section 115 of the Trade Facilitation and Trade Enforcement Act (TFTEA). This pilot will provide valuable input to CBP to help establish policy, automation requirements in ACE, and provide a smooth transition for the trade.

#### **15<sup>th</sup> Term Commercial Customs Operations Advisory Committee** **October 03, 2018**

#### **TRADE MODERNIZATION SUBCOMMITTEE** **FOREIGN TRADE ZONE REGULATORY REFORM WORKING GROUP** **Modernization of Language** **010300**

**Regulatory Reform:** As outlined in the red-lined version of 19 CFR 146 to support these recommendations, COAC recommends that CBP modernize and streamline FTZ Regulations to:

- conform with the FTZ Board regulations modified in 2012 and reference FTZ board production authority scope of approval and restrictions;
- reflect a paperless environment in ACE;
- eliminate and/or automate certain forms, seals, and processes that are antiquated;
- distinguish authority of CBP Centers of Excellence and Expertise for post entry work;
- revise to meet the new In-bond regulations implemented in 2018;
- update and move all definitions to Subpart A to provide a central location for clarity;



- reorder regulatory sections to provide clarity and logical order of content;
- clarify language concerning valuation and quantity reporting;
- modify the five (5) day removal rule

#### **010301**

Update Regulations: As outlined in the red-lined version of 19 CFR 146 in support of these recommendations, COAC recommends that CBP draft language for:

- “Zone Status Changes” in 19 CFR 146.12(e).
- “Voluntary Cessation of Zone Activities” in Subpart C
- Free Trade Agreements with Duty Deferral restrictions (create 19 CFR 145.64 for NAFTA and 19 CFR 145.65 for U.S. Chile).
- Expanded language for 19 CFR 146.15 to distinguish dutiable status of the goods or consider consolidating with Subpart E.
- Title transfer in an FTZ.
- Temporary removal provisions.

#### **010302**

Trade Remedies: COAC recommends that CBP adopt changes to 19 CFR 146.13 and throughout 19 CFR 146 as applicable to include regulatory language that merchandise subject to Anti-Dumping/Countervailing Duties (AD/CVD) and trade remedies such as Section 201, 232, and 301 must be as admitted in Privileged Foreign Status. The regulatory changes should clarify that any applicable AD/CVD duties would apply regardless of the processing conducted in the FTZ, but as applicable trade remedy duties may not apply based on the FTZ processing. However, in all cases the rate of duty in force on the date of removal from the FTZ would apply. Further, CBP should provide clarification regarding the appropriate country of origin for duty purposes due to Census’ requirement, inconsistent with CBP origin determinations, to report the country of origin based on the foreign status merchandise and in cases of components from more than one country, the country with the greatest aggregate value.

#### **010303**

Zone Activation Process: COAC recommends that CBP revise 19CFR146.6 to provide a more formal and streamlined process for the zone application, denial and appeal process so activations are handled in a timely and uniform manner.

#### **010304**

ACE Policy: As FTZ admissions fully migrate to ACE, the regulations should be updated to clarify the different admission types, the timing associated with each, and the specific data elements required in ACE, including the same for regular and weekly entries.

## **Policy Changes**

### **010305**

Direct Delivery: COAC recommends that CBP develop and publicly disseminate a risk assessment methodology that is both company-based and product-based to allow CBP to establish known parameters for approvals and also allow related parties to FTZ Operator firms to qualify for direct delivery. COAC also recommends that 19 CFR 146.39 be updated to require the ACE data elements for CBP Form 214 as outlined in the ACE CATAIR

### **010306**

Production Equipment: COAC recommends that CBP create a new admission type or flag in ACE for Production Equipment and modify the regulations at 19 CFR 146.16 to accommodate this revised process and any applicable requirements within the FTZ Manual.

### **010307**

FTZ Bonding: COAC recommends that CBP review how the FTZ bond amount (Activity Code 4) is determined with the COAC Bond Working Group to ensure it contemplates the custodial obligation of an FTZ based on duty of average inventory rather than value within the FTZ. This review should ensure the FTZ bond amounts are sufficient to protect the revenue of the U.S. and calculated in a uniform manner to avoid unnecessary hardship on the trade. COAC further recommends that CBP modernize the FTZ regulations to align with the eBond environment implemented in January 2015.

### **010308**

FTZ Manual: In support of the final regulatory and policy changes made to 19 CFR 146, COAC recommends that CBP modernize and streamline the FTZ Manual to ensure it aligns with all regulatory reform, policy changes, and automation capabilities.

### **010309**

Section 321 De Minimis: In light of recent CBP rulings restricting section 321 de minimis shipments through FTZs and the increasing flow of such shipments from warehouses abroad located in Mexico and Canada, COAC recommends that CBP consult with COAC to examine the economic impact such restrictions are having on the domestic FTZ industry and the efficacy of a regulatory or statutory change to enable such operations to occur in the U.S.

## **PGA Capabilities and Collaboration**

### **010310**

Partner Government Agencies (PGA): COAC recommends that CBP incorporate into the regulatory rewrite of 19 CFR 146 any reference to PGA jurisdiction where CBP has enforcement authority to hold or detain merchandise. COAC also recommends that CBP engage with the Border Interagency Executive Council (BIEC) to solidify PGA Policy to incorporate into the regulatory rewrite for admissions.

## **Technology and Automation Solutions**

### **010311**

CBP Form 216 and Exceptions: COAC recommends that CBP create functionality in ACE that provides a mechanism to electronically report CBF Form 216 and all exceptions for overages, shortages, destructions, etc.

## **FTZ Enforcement**

### **010312**

Penalties and Liquidated Damages: COAC recommends that CBP modify 19 CFR 146.81 to clarify and reference potential for liquidated damages under 19 CFR 113.73 and penalties under 19 USC 1592 for clearer transparency to the trade.

### **010313**

**Suspension:** COAC recommends that CBP modify 19 CFR 146.82 to provide an opportunity to appeal to the Office of Field Operations (OFO) at CBP Headquarters to be consistent with OFO's review of any cause for suspension.

**February 27, 2019**

## **SECURE TRADE LANES SUBCOMMITTEE**

### **IN-BOND RECOMMENDATIONS**

#### **010314**

COAC recommends that CBP enhance ACE Reports to allow bond owners to access as much data as legally allowed, for every bonded movement of cargo that has obligated their bond. This will enable bond owners to effectively manage legal obligations that are created by the use of their carrier or custodial bonds, based on below requirements:

- Regardless of the mode of transportation in which a bond was initiated
- At a minimum the report should display information that will identify the physical shipment i.e. arriving carrier, bill of lading, pieces and weight as well as the party that has obligated their bond.

#### **010315**

COAC recommends that ACE functionality be developed to send push notifications to the party whose bond has been obligated when a shipment is nearing the 30 day maximum time, similar to the ACE General Order clock functionality that generates 1R/1S-type notifications, in anticipation of the enforcement of a strict maximum 30-day In-bond total transit time.

#### **010316**

COAC recommends that visibility to CBP cargo status be given to both the carrier and broker as soon as possible and earlier than is currently done. Today, visibility to the CBP status of cargo moving under bond is not provided to the carrier until messages are received by CBP that report the arrival of the cargo at the In-bond destination port, precluding the ability to effectively manage delivery within the In-bond facility free time

**010317**

COAC recommends that CBP clarify and standardize what constitutes the legal boundaries that are allowed for the purpose of verifying content and piece count of In- Bond merchandise. In-bond merchandise is frequently opened in order to verify the piece count and detailed specifications (make, model, serial number, etc.) of the goods prior to being exported. CBP periodically issues liquidated damage claims alleging unauthorized manipulation of the In-bond merchandise. Since there is no definition of manipulation in the regulations, trade stakeholders lack the opportunity to know with certainty what actions are prohibited when verifying In-bond merchandise.

**010318**

COAC recommends that holds placed by CBP or a Participating Government Agency (PGA) on all cargo, including cargo moving In-bond, should include disposition codes that identify the hold status of cargo by communicating what PGA has held the cargo, the reason the cargo has been held, the location the cargo must be moved to for inspection, and/or if the cargo is required to be exported or destroyed.

**010319**

COAC recommends that CBP develop a capability, through the ACE portal or other electronic means, to provide real-time notice to the trade when a FIRMS code is activated or deactivated. This will ensure visibility to trade in the correct assignment of the required FIRMS codes for arrivals.

**010320**

COAC also recommends that the requirement for inclusion of a FIRMS code for all In- Bond cargo movements be deferred until there is mutual agreement to the capability and requirement for FIRMS application on all In Bond movements, including a suitable transition period to allow Trade to implement this new requirement.

**010321**

COAC recommends that CBP provide the ability to amend In-bond transactions rather than the current process of having to delete and re-add full details of an In-bond record. Efficiencies would be gained by both the trade and CBP with this additional functionality.

**010322**

COAC recommends that CBP publish clear and specific guidelines that explain what acceptable and adequate documents and/or procedures will satisfy CBP's Proof of Export requirements. Until an automated solution is available, suggested processes are to continue to allow CBP, upon request, to stamp CBPF-7512 or similar document containing the In-bond number, outbound bill of lading, an official foreign government entry document or its electronic equivalent.

**010323**

COAC recommends that CBP work closely with industry stakeholders to develop a comprehensive Information Technology (IT) plan across ACE modules to facilitate In- Bond automation. The principles informing the development of this plan should include the following:

- i. Carriers in all modes should be provided with the necessary functionality to accomplish all carrier related In-bond automation requirements in the Automated Manifest System(AMS) and not be required to access the Automated Broker Interface (ABI) for such functions.
- ii. The timing to develop/implement new ACE functionality to allow efficient implementation of the final rule automation requirements should determine the effective date of a given automation requirement.
- iii. Automated solutions should be developed on a systemic basis to ensure stakeholders do not have to engage in manual workarounds to implement partial functionality.
- iv. CBP should leverage existing ACE automation projects, such as truck refactoring and automated export manifest, to the maximum extent to develop full In-bond automation capabilities for both import and export across all modes.

A timeline of no later than December 31, 2019 should be established by CBP to require all facilities that handle In-bond freight to automate their In-bond processes

## **SECURE TRADE LANES SUBCOMMITTEE TRUSTED TRADER**

### **010324**

COAC recommends that CBP adopt a Forced Labor strategy and continue to develop a Forced Labor component of the future CTPAT Trade Compliance program that allows companies who have a Corporate Social Responsibility or Compliance program to demonstrate compliance and self-identify as low risk in the area of forced labor, expanding their trusted trader scope.

### **010325**

COAC recommends that CBP include a definition of the term Forced Labor in the strategy document.

### **010326**

COAC recommends CBP allow companies that have forced labor programs the option of opting in or opting out of the Forced Labor component of the future CTPAT Trade Compliance program to be in line with the voluntary nature of CTPAT for security and Importer Self-Assessment (ISA) for trade compliance, and similar to existing ISA programs for Product Safety and Drawback.

### **010327**

COAC recommends CBP clearly identify the program requirements, participant qualifications, and detail documents required as “evidence of implementation” by stage of participation such as the initial application and review, an annual notification and a periodic validation, as appropriate. Existing standards, such as the California Supply Chain Transparency & Disclosure Act, should be reviewed for sufficient evidence of implementation to leverage efforts and programs companies already have in place.

**010328**

COAC recommends wherever possible, a standard of sharing account information such as a company's internal controls to minimize forced labor risk and remediation procedures is preferred over requiring prescriptive documents such as audit reports, corrective action plans, etc.

**010329**

COAC recommends that when documents such as audit reports or corrective action plans are provided, the information should only be related to forced labor and importers should be allowed to redact or omit sections related to other corporate social responsibility areas.

**010330**

Regarding the proposed strategy criteria on "Remediate Violations", COAC recommends that, as is the case with other product admissibility or compliance components e.g., intellectual property or commercial negligence, CBP provide guidance regarding the potential enforcement actions such as issuing a detention, redelivery or seizure notice or a monetary penalty when CBP suspects, or a program participant discloses a violation.

**010331**

COAC recommends that CBP detail the disclosure process and the mitigation that could be afforded to participants as program benefits when forced labor violations occur and are voluntarily disclosed.

**010332**

COAC recommends CBP continue to work with the Trusted Trader Working Group (TTWG) on the requirements, development, and implementation of the specific criteria and benefits of the strategy to achieve the objectives of the overall Trusted Trader Strategy Framework to include alignment with current Trusted Trader programs as well as achieving a balance of requirements, investment, and benefits for participants.

**SECURE TRADE LANES SUBCOMMITTEE****010333**

COAC recommends that CBP develop a Standard Operating Procedure (SOP) for Pipeline movements that will standardize entry filing procedures and provide uniformity at all ports of entry. To help collaborate on this effort, the Pipeline Working Group has created an SOP Appendix to these recommendations to capture key points and issues that should be included in this SOP.

**010334**

COAC recommends that CBP standardize data reporting requirements that allows for monthly reporting of Pipeline movements as outlined in the SOP Appendix.

**010335**

COAC recommends that CBP develop standard reporting requirements for Pipeline Operators, which will resolve variability among port practices as outlined in the SOP Appendix.

**010336**

COAC recommends that CBP automate the filing of the 7512 for In-bond pipeline movements across land borders to meet Census and data collection requirements as outlined in the SOP Appendix.

**010337**

COAC recommends that CBP confirm the appropriate Merchandise Processing Fee (MPF) procedures for natural gas and other products moved in continuous pipeline stream.

**010338**

COAC recommends that CBP review the bond requirements for Pipeline Operators with the Bond Working Group to provide uniformity in the Customs Bonds required and liability created for Pipeline Operators.

**010339**

COAC recommends that CBP place the Pipeline Working Group on hiatus to allow CBP to develop the SOP to respond to these recommendations and continue ongoing dialogue with the Petroleum Center of Excellence and Expertise. If there are technology and/or regulatory issues to be addressed, COAC recommends these be addressed with the Trade Support Network or COAC Regulatory Reform Working Group as necessary

**NEXT GENERATION FACILITATION SUBCOMMITTEE  
REGULATORY REFORM****Communication****010340**

COAC recommends that CBP provide for the use of automated and electronic forms of notification whenever possible.

**Clarity:****010341**

COAC recommends that CBP should simplify filings, promoting the use of automated and electronic submissions as practical to eliminate the need for paper forms and multiple copies.

**010342**

COAC recommends that CBP eliminate irrelevant or obsolete documents and data wherever applicable and practicable.

**Consistency:****010343**

COAC recommends that CBP remove lists embedded within the text of the regulations whenever possible to prevent reliance on potentially incorrect/outdated information. Instead, CBP should consider placing these lists on CBP.gov as a reference page or document.

**010344**

COAC recommends that whenever amending Sections or Parts of the regulations that CBP also take the opportunity to eliminate in those regulations, language and references for antiquated communication methods and obsolete programs or agreements that are no longer active.

**Consolidation:****010345**

COAC recommends that CBP consolidate references and information related to a topic to the greatest extent possible.

**Compatibility****010346**

COAC recommends that CBP identify mandatory certificates, certifications, or additional product information and allow, to the extent provided by law, filers to supply them electronically, as well as to supply them upon request using an account-based approach, rather than having to automatically submit them with each transaction.

**010347**

COAC recommends that where practicable, CBP should implicitly grant permission for certain routine activities unless CBP expressly states otherwise.

**010348**

COAC recommends that CBP should grant full extension periods instead of requiring multiple extension requests, particularly where CBP routinely grants them anyway.

**010349**

COAC recommends that CBP reduce regulation and control regulatory costs by eliminating the approximately 170 sections in Section 19, Code of Federal Regulations that the Regulatory Reform Working Group identified as appropriate for repeal.

**E-COMMERCE****010350**

COAC recommends that CBP review and adopt the multi-modal supply chain mapping that it developed with the trade when considering future e-commerce policy, automation development, enforcement postures, facilitation programs and education efforts.

**INTELLIGENT ENFORCEMENT SUBCOMMITTEE****INTELLECTUAL PROPERTY RIGHTS****010351**

Additional Data Elements and Metrics: Building on the information already provided in CBP's annual IPR Enforcement Statistics, COAC recommends that CBP collect the following statistical data by mode and provide metrics regarding (1) seizures and (2) detentions which do not result in seizures:



- a. types of IPR violations by mode
- b. number of shipments by mode
- c. country of origin for such shipments,
- d. port of export for such shipments, and
- e. type of commodity for such shipments.

#### **010352**

Small Package: Whereas the small package arena has been noted by CBP publicly to be a concern for potentially containing illicit shipments of IPR infringing products, and whereas the express industry and rights holders have an interest in participating with CBP to explore avenues for better detection, interception, and prevention of each illicit shipment, COAC recommends:

- a. CBP develop, with the partnership of rights holders, importers and/or consignees, the postal service, and the express industry, a mapping exercise that depicts the specific risks or concerns within the small package industry for IPR violations, which are different from traditional trade, so that those specific concerns can be prioritized and addressed.
- b. Based on the mapping exercise, COAC recommends that CBP develop a specialized, efficient process for targeting, detaining, inspecting, seizing, destroying, and/or releasing small parcels, specifically related to the shipment's value and overall risk. The process should be specific to counterfeit goods and take into account the resources available to CBP, importers and/or consignees, and rights holders.
- c. As rights holders have noted a deficiency in the type and amount of information available to them related specifically to the small package arena, COAC recommends that CBP, in partnership with relevant stakeholders, examine avenues for information exchange between rights holders, law enforcement, and CBP to facilitate dissemination of intelligence related to supply chains and trends in IPR infringing materials in the small package arena. CBP should consider establishing a separate channel, such as a public communication and quarterly meetings with the stakeholders to facilitate reporting and information exchange on a consistent basis concerning small packages containing IPR infringing products. This will ensure that the proper stakeholders are engaged and aware of such trends and data, as rights holders can use this information to focus their resources depending on the trends shown.

#### **010353**

Automation: As the current process for notification and information exchange is a paper/manual process, COAC recommends that CBP explore the establishment of an electronic means to notify and share as many data points as possible along with relevant documents at the time of shipment seizure or detention.

**010354**

Regulatory: COAC recommends that CBP evaluate existing regulations related to counterfeits and suggest modifications that would streamline the process of seizure, forfeiture, detention, and abandonment for IPR enforcement.

**010355**

Donation Program: COAC encourages collaboration between CBP and the private sector to enable the detection of counterfeit products and enforce IPR by allowing donations of hardware, software, equipment and similar technologies as well as accept training and other support services from the private sector for the purpose of enforcing IPR.

**010356**

eRecordation: COAC recommends that CBP improve communication with the ports of entry through the designated CBP Centers when onboarding new rights holders who register their brand through the eRecordation process. This should encourage participation in the eRecordation program by avoiding unnecessary delays, detentions or seizures.

**May 30, 2019**

**NEXT GENERATION FACILITATION SUBCOMMITTEE  
EMERGING TECHNOLOGY**

**010357**

COAC recommends that as CBP continues to conduct Proof of Concept (POC) exercises it should design, execute and analyze the POCs in a manner that encourages the greatest possible number of adopters. In particular, neither technology, investment nor cost should serve as a barrier to entry (do not restrict participants due to the necessary type of technology or capital).

**010358**

COAC recommends that in order to encourage the adoption of blockchain, CBP should strive for global data standards and protocols consistent with WCO principles that promote trade facilitation, transparency and compliance in the context of cargo entry, clearance/release and post entry review/audit processes.

**010359**

COAC recommends that CBP provide a web page at [www.cbp.gov](http://www.cbp.gov) about blockchain with Frequently Asked Questions and an explanation as to the basic concepts and application of blockchain. The web page should address the rationale for CBP's interest in blockchain, its perceived relevancy to customs transactions and its benefits by way of both case studies (Proof of Concept) and metrics that articulate the potential return on investment. It also should provide an avenue for individuals to pose questions and suggestions regarding CBP's examination and consideration of blockchain technology.

**August 21, 2019**

## **RAPID RESPONSE - NORTHERN TRIANGLE WORKING GROUP**

### **General**

#### **010360**

COAC recommends that CBP create a Northern Triangle Task Force that embodies a coordinated whole of government or “1 USG” approach comprised of CBP, DHS, PGA (including but not limited to USAID, UNICEF, UNHCR, DOC, DOS, USTR, OPIC, IFC, EXIM Bank and the IADB), NGO and private sector members, including COAC, that meets regularly to address challenges, opportunities and progress in the Northern Triangle Region (Region). The Task Force would ensure that sustainable policies and processes are executed, which in the short and long term reduce nontariff trade barriers, improve customs processes, enhance facilitation and promote safety, security and economic well-being in the Region.

### **Trade Finance and Economic Growth**

#### **010361**

COAC recommends that CBP work with its PGA, NGO and private sector partners to encourage promulgation of a rule of law that promotes formality and transparency in the financial arena and leverages U.S., Regional and third country financial institutions and banks including OPIC, USAID, IFC, EXIM Bank and the IADB to increase direct and indirect funding that supports small and medium sized business (microfinancing) as well as larger enterprises demonstrating a strong track-record of local investment and job creation.

### **Trade Facilitation**

#### **010362**

COAC recommends that, as a top priority, CBP and the PGAs encourage uniform national policies and procedures that harmonize and streamline licensing and permitting procedures, in-bond and foreign trade zone (FTZ) movements as well as cargo inspection and swift, uniform release procedures through risk management consistent with CBP’s and other customs administrations’ best practices such as “fast lane” processing. Such policies and procedures should be designed to facilitate not only large containerized, but also small parcel e-commerce, shipments.

#### **010363**

COAC recommends that CBP continue to work with the public sector (USTR, DOS, DOC ITA & CLDP) and private sector to conduct coordinated outreach that builds upon the progress in the Region to implement the core tenants of the WTO Trade Facilitation Agreement such as publication, notification and transparency of laws and regulations.

#### **010364**

COAC recommends that CBP consider the viability of supporting a “Northern Triangle Trade and Job Promotion Act” that the U.S. Congress would enact for a limited duration, enhancing program benefits to apparel, agricultural and other Regional economic staples exported to the

U.S. While considering this approach, CBP and the appropriate PGAs should explore the reasons for the underutilization of tariff preference levels (TPLs) in the Region and how to enhance such opportunities.

## **Infrastructure**

### **010365**

COAC recommends that CBP and its public and private sector partners should initially target one and then eventually several land and sea ports throughout the Region to promote infrastructure yielding both physical (cargo inspection/processing facilities, dedicated cargo versus passenger lanes, improved roads, employee housing, etc.) and operational (consistent work hours, technology, unified cargo processing, etc.) improvements and efficiencies. The projects could serve as a proof of concept that could be replicated in other locations. Suggested projects for prioritization are included in the Northern Triangle Findings Report.

## **Security and Corruption**

### **010366**

COAC recommends, as a top priority, that CBP and its public and private sector partners continue to promote and encourage professionalism among customs and border processing officials consistent with the WCO Revised Arusha Declaration of the Customs Co-Cooperation Council Concerning Good Governance and Integrity in Customs, the U.S.-Africa Security Governance Initiative (SGI) and other best practices implemented in the U.S. and other customs administrations.

### **010367**

COAC recommends that CBP and its public and private sector partners immediately take the necessary steps to develop a U.S.-Northern Triangle Security Governance Initiative (Initiative) to engage leadership in the Northern Triangle, with interagency support from the U.S. Government, to identify and develop areas to address the greatest security needs through a Border Management Secretariat and public-private partnership to ensure the Initiative complements the work that Regional bodies already have conducted in this regard.

### **010368**

COAC recommends that CBP immediately encourage the Region to build business partnerships that support and grow secure and ethical trade by increasing participation in, and benefits from:

- i.) local public-private sector policing initiatives and
- ii.) Authorized Economic Operator (AEO) programs reinforced with U.S. and other AEO mutual recognition agreements.

## **Capacity Building**

### **010369**

COAC recommends that, as a top priority, CBP work with the PGAs and particularly organizations such as UNICEF and UNHCR as well as the U.S. private sector stakeholders, to

employ a multi-layered approach to synergize local, regional and national elected officials with business, non-profit and faith-based institutional leaders to jointly tackle trade and commercial related challenges. CBP and its public and private sector partners should initially identify one and then additional communities where it can assist in building such a coalition to educate youth in academic and vocational settings that create job opportunities with local employers. Suggested cities for prioritization are included in the Northern Triangle Findings Report.

#### **010370**

COAC recommends that CBP conduct education and outreach programs with its public and private sector partners that promote trade facilitation by empowering local customs and border officials to convey such knowledge to others through “train the trainer” courses.

### **INTELLIGENT ENFORCEMENT SUBCOMMITTEE BOND WORKING GROUP**

#### **010371**

**Risk-Based Bonding:** COAC recommends, consistent with recommendation 010282, that CBP reconsider its Risk-Based Bonding policy and complete the desk top exercises to determine the impact this new model will have on the trade.

#### **010372**

**Delay Implementation of Risk-Based Bonding:** COAC recommends that CBP delay implementation of the risk-based bonding model to collect STBs on AD/CVD shipments for at least 90 days or until CBP can finalize the policy and the functionality to build a bond query for the trade to identify a new importer that is required to post STBs prior to Cargo Release.

#### **010373**

**ACE Automation for Risk-Based Bonding:** Once policy is finalized, the trade needs ample time for testing in CERT before the risk-based model for STBs can be fully implemented in ACE. COAC recommends that CBP develop an edit in ABI which identifies a “new importer” for this policy and provides a message to the filer.

### **IPR WORKING GROUP eRecordation Automation**

COAC recommends the CBP receive budget and resources to make the following improvements to the eRecordation system:

- a. **Electronic Updates:** Allow rights holders to update information electronically on specific products, such as adding new, or deleting former, licensees, manufacturers or subsidiaries, in a secure mode.
- b. **Renewal Prompts:** Provide prompts or alerts of the renewal process enabling rights holders to electronically take subsequent responsive actions.

- c. Interactive Recordation System: Make the eRecordation system more interactive with the rights holder, permitting an exchange of more detailed information, in a secure mode, about products contained in the system in order to assist customs officers in identifying legitimate merchandise.

## **ACE Portal Automation**

### **010375**

Detention and Seizure Process Visibility: COAC recommends functionality be built in the ACE portal where rights holders can view detention and seizure information to the extent allowed by law to increase visibility throughout the detention and seizure process. As a short-term solution, the CBP Centers should work with affected rights holders and importers to share this information.

### **010376**

Intelligence and Information Sharing: COAC recommends functionality be built in the ACE portal to allow intelligence sharing which provides the means for CBP, rights holders, importers and exporters to exchange intelligence, on a confidential basis on the outcome of IPR violations and involved parties to the extent allowed by law.

## **SECURE TRADE LANES SUBCOMMITTEE IN-BOND RECOMMENDATIONS**

### **010377**

COAC recommends that CBP provide all necessary functionality to allow effective automation across all modes and between import and export cargo movements within the automated manifest systems, especially leveraging the planned truck refactoring and the automation of ocean export manifest processes in ACE prior to the next level of enforcement.

### **010378**

COAC recommends all automated manifests systems, and associated CBP policy, should be significantly enhanced to allow a carrier to “take possession” of an In-bond shipment, where the initial In-bond was applied in another mode automated system, within the secondary mode system and confirm the appropriate arrival / export within the assuming mode manifest system. This will eliminate the need for multiple subsequent In-bond filing.

### **010379**

COAC recommends that CBP develop written guidelines for electronically reporting the diversion of In-bond cargo – including the handling of entry filings in shipments that have been diverted

### **010380**

COAC recommends, due to the impacts of non-automated facilities within the In-bond supply chain, that CBP require all facilities that handle In-bond cargo to automate to the extent necessary to allow the seamless passing of cargo and closure of In-bonds at the respective facilities.

**010381**

COAC recommends that CBP provide specific functionality be programmed across ACE modules to facilitate the movement and disposition of cargo that has CBP / PGA refusal / disaster recovery requirements, to allow the extension of the 30 day clock and / or the provision of a status / reason code for the post 30 day status, to facilitate effective handling of cargo that is refused entry or is impacted by an impediment to effective movement to final In-bond location.

**010382**

COAC recommends that CBP provide an automated solution to accommodate the required notations for zone restricted cargo to facilitate CBP enforcement of the FTZ Board or TTB required export or destruction of ZR merchandise.

**010383**

COAC recommends that CBP make available information on In-bond events regardless of mode (in-bound and export) related to FTZ and warehouse operations that provides details of events, transfers of liability, responsible parties and status. Information regarding and the ability to update transaction events to be available both through the ACE portal and an EDI solution.

**010384**

COAC recommends that CBP allow benefits for expedited clearance for In-bond participants using FAST lanes at border facilities to expedite border transit

**010385**

COAC recommends, due to the complexity and supply chain process needed for effective implementation of the proposed In-bond regulations, that CBP allow two (2) narrow categories of air shipments be exempted from the current intended IB-FR requirements for electronic arrival/export until such time the automation can accommodate below scenarios:

- Cargo originating in the US from either bonded warehouses or FTZs and are subsequently exported by air, and
- Cargo arriving in the US on a mode of transport other than air and are subsequently transferred to air for exportation from the US or movement to a US port of entry

**010386**

COAC recommends that CBP provide the bonded carrier (not only the QP Filer) with visibility of any In-bond HOLD, prior to the report of arrival at the destination port. Since carriers are no longer required to physically report to the port office, visibility is required for the real time routing of goods when an exam is requested by the port of destination after normal business hours.

**TRUSTED TRADER WORKING GROUP****Forced Labor Implementation****010387**

COAC recommends that CBP design the CTPAT Trade Compliance (CTPAT-TC) program requirements for forced labor and associated benefits to encourage participation to facilitate self-

identification of low risk importers. Program benefits for voluntary participation should be measurable, reportable, and off-set the cost of participation. Requirements should be scalable, flexible, and address a company's efforts to combat forced labor in their supply chain. As forced labor is often a subset of a broader corporate social responsibility program, requirements should be limited in focus to forced labor and companies should not be required to provide information beyond the scope of forced labor as defined under 19 USC 1307 and the CTPAT Trade Compliance Program.

#### **010388**

COAC recommends CBP partner with stakeholders to hold informal meetings in order to learn about typical corporate social responsibility programs, the efforts to combat forced labor, and available program documentation by meeting with a cross-section of companies to review their programs prior to finalizing the CTPAT-TC Forced Labor program requirements.

#### **010389**

COAC recommends CBP conduct this outreach and bi-directional education prior to finalizing the documents required as evidence of implementation for the Forced Labor component of the CTPAT-TC program.

#### **010390**

In addition to meeting with importers, COAC recommends that CBP also meet with third party auditing companies who conduct social compliance audits that include the area of forced labor. These companies see a variety of programs and supply chains and could be a valuable stakeholder to consult for a broader viewpoint of effective actions and best practices for combating forced labor in the supply chain.

#### **010391**

As a baseline, COAC recommends that CBP align the program requirements for the forced labor component of CTPAT-TC with the other compliance and regulatory requirements of the current Importer Self-Assessment (ISA) program, similar to how risk and internal controls are reviewed and assessed for classification, valuation, free trade agreements, anti-dumping, etc. The application, Application Review Meeting (ARM), and Annual Notification Letter (ANL) should be completed once and encompass all components of the CTPAT-TC program including forced labor.

**December 04, 2019**

#### **SECURE TRADE LANES SUBCOMMITTEE**

#### **Export Modernization Working Group (EMWG)**

#### **010392**

COAC Recommends that as the export manifest processing environment moves forward from a paper to a paperless (electronic) environment, CBP collaborate with stakeholders and ensure that all critical control points are functional through testing of the data, assess the impact of the changes to process, as well as work with the Trade on how the regulations can be developed and changed.



**010393**

COAC Recommends that while developing the electronic export manifest system, the regulatory changes and associated policy guidelines produced are clear and concise for the regulators, trade users, and enforcement bodies to understand prior to going live.

**010394**

COAC Recommends that the data elements be mapped for Electronic Export Information (EEI) and Manifest filing to define the owners of the data, those who are responsible for the data, and those who may be doing the filing. The mapping should include defining which government agency requires each of the data elements which will demonstrate who is using the data provided as well as significance. By doing so, consider eliminating redundant and/or unnecessary data requirements and soliciting data only from the most accurate source of the data to achieve more accurate filings in accordance with Section 343 of the Trade Act of 2002.

**010395**

COAC Recommends that CBP work with Census to revise the Foreign Trade Regulations (15 CFR Part 30) and to align CBP's enforcement policy and mitigation guidelines to consider the unintended consequences of the current enforcement environment regarding Electronic Export Information (EEI) and manifest data that often hinders the collection of accurate data. By doing so, promote accurate data reporting, effectively manage risk in the EEI and manifest transaction, and ensure uniformity among US ports of export.

**NEXT GENERATION FACILITATION SUBCOMMITTEE****1USG Working Group****Short term recommendation (Evaluative Proof of Concept)****010396**

COAC Recommends that in order to more fully realize the benefits of the Global Business Identifier (GBI) initiative, CBP work with the agencies within the Border Interagency Executive Council (BIEC) to identify and assess any other entity identifiers currently in use and pursue alignment on the use of the GBI exclusively wherever feasible.

**010397**

COAC Recommends that to allow for reasonable estimation of cost and requirements to participate, CBP should provide that final Evaluative Proof of Concept (EPoC ) requirements relating to data and electronic transmission for pilot participation are identified and communicated as clearly and early as possible, once funds for the EPoC are secured by CBP.

**010398**

COAC Recommends that CBP work with the COAC 1USG Working Group in the design of the Pilot program management (including lifespan of pilot, ramp up period, minimum number of participants, rules for participating in the pilot, options and windows to expand the list of products included under the pilot, etc.)

**010399**

COAC Recommends that Evaluative Proof of Concept (EPoC) participants be able to obtain the needed entity identifier(s) from applicable entity identifier management companies at no or significantly reduced cost.

**010400**

COAC Recommends that In designing the EPoC, CBP should push for submission of all three identifiers but permit the use of two of the three to help with participant recruitment efforts.

**010401**

COAC Recommends that Data utilized under the GBI program be independent of ownership or contract concerns that could result in the elimination or purging of data from systems within the government or trade.

**010402**

COAC Recommends that The currently proposed two-phased launch of EPoC be combined into a single phase with cargo release and entry summary filing under the EPoC to launch concurrently as this would enable transaction processing to occur in one or two steps as needed within the EPoC

**010403**

COAC Recommends that CBP broaden the scope of the EPoC to include Mexico as a country of origin in addition to China, Canada, New Zealand, Vietnam and Singapore.

**010404**

COAC Recommends that CBP consider expanding the EPoC to include all the data sets required for a transaction from security filing through entry summary.

**010405**

COAC Recommends that CBP provide legal entities with access to reporting of their GBI to enable detection of unauthorized use. In addition, importers of record should have visibility to GBI entities associated with their transactions.

**010406**

COAC Recommends that EPoC participants not be penalized for lack of timeliness or completeness of data sets submitted for transactions within the pilot.

**010407**

COAC Recommends that BIEC develop a policy that the shipments of CTPAT importers who submit all required GBI data for entities in their supply chains receive fewer inspections from CBP and Partnering Government Agencies (PGAs).

**010408**

COAC Recommends that throughout the pilot, CBP should review the entire operational process to ensure that there is no significant negative impact to trade facilitation resulting from this process and data submission change.

## **Longer term recommendations (Post Evaluative Proof of Concept)**

### **010409**

COAC Recommends that in order to more fully realize the benefits of the GBI initiative in an international context, CBP explore aligning the GBI bi-laterally, regionally and with work underway at the World Customs Organization (WCO) to enable and facilitate broader adoption.

### **010410**

COAC Recommends that CBP, in light of proprietary concerns, evaluate the degree of information access afforded to private-sector parties other than the importer of record.

### **010411**

COAC Recommends that CBP explore the effective use of GBI related to screening entities of concern (e.g. Restricted Party Screening, Import Alerts etc.). The exploration should approach both:

- Pro-active screening by the Government and/or entity identifier management companies as part of the issuance and maintenance process to assist in mitigating the ongoing screening requirements on the trade.
- Agency utilization of the GBI in publication of entities of concern to enable more effective identification of those parties within the applicable supply chain.

### **010412**

COAC Recommends that CBP leverage GBI and the accompanying data to reduce redundant data elements currently required at various points of the importation process. The effort to reduce redundant data elements should apply to both CBP-required and PGA-required elements.

**April 15, 2020**

## **INTELLIGENT ENFORCEMENT SUBCOMMITTEE**

### **Forced Labor Working Group Recommendations**

#### **FORCED LABOR ALLEGATION**

Define the elements of a credible high-quality allegation, including the mechanisms of reporting and types of documents that comprise a credible high-quality allegation.

### **010413**

COAC recommends CBP develop a guidance document that includes specific criteria to assist individuals and organizations in identifying meaningful information to include when reporting forced labor allegations. We have provided the specific criteria in Appendix A.

#### **MEANINGFUL CBP FORM 28 RELATED TO FORCED LABOR**

- Define elements of a CBP Form 28 for a specific inquiry related to an entry that is subject to a WRO. Work product should lead to criteria required to demonstrate Proof of Admissibility to CBP - 19 CFR § 12.43.

### **010414**

COAC recommends CBP modernize the current forced labor regulations in 19 CFR § 12.43 and provide for a public comment period. CBP should consider the following updates:

- a. In regards to Proof of Admissibility requirements per 19 CFR § 12.43, rely less on reference to specific documents, such as the forced labor Certificate of Origin, that are obsolete or may become so in the future and incorporate the Forced Labor CBP Form 28 questions that can be used to start the dialog with trade in the course of determining Proof of Admissibility.
- b. Currently, forced labor regulations are silent as to when and how CBP must detain merchandise subject to a Withhold Release Order (WRO). COAC recommends CBP update the regulations so they are similar with existing procedures, policies and directives for detention of merchandise, which CBP is required to follow in order to make a final determination within a specified timeframe. CBP should establish an appropriate timeframe to respond to an importer's proof of admissibility as a result of a WRO, and this timeframe should be incorporated into the revision of the regulations .<sup>1</sup>

<sup>1</sup> COAC previously recommended this under recommendation 010120, which was not fully implemented.

#### **010415**

COAC recommends CBP use update the questions that are used on a CBP Form 28 to solicit information to confirm forced labor admissibility as opposed to a detention notice. The suggested questions are provided as Appendix B and the aim is to provide CBP with meaningful information for a specific entry or a set of entries, as it relates to forced labor. They are not intended to be used as an equivalent to an audit, or to gather broad information over the entire supply chain for an importer.

#### **STATUTORY GUIDANCE: DISCLOSURE PROCESS & BENEFITS**

- Develop guidelines on the disclosure procedure and reporting requirements that importers should follow when an incident of forced labor is found to reasonably exist in their supply chain.
- Identify reasonable factors that CBP can consider for voluntary self-disclosure, full cooperation, and timely and appropriate remediation related to forced labor violations.

#### **010416**

Regulatory Framework: Since 19 CFR 162.74 only allows for violations of 19 USC 1592 and 1593(a), COAC recommends that CBP update 19 CFR 162.74 to include violations of 19 USC 1307 and 19 USC 1595(a). COAC has drafted recommended language as attached in Appendix C.

#### **010417**

Disclosure Eligibility: COAC recommends CBP design a disclosure process that includes the following elements:

- a. Disclosures are for violations of 19 USC 1307 and 19 USC 1595(a).

- b. Disclosures are allowed for the importation of any article which is being or has been introduced, or attempted to be introduced into the commerce of the United States.
- c. Disclosures apply to goods made in whole or in part of forced labor in that forced labor incidents discovered at both direct suppliers and upstream suppliers are eligible for disclosure.
- d. A WRO should not be considered an ongoing investigation that limits disclosure eligibility if the importer and their supplier(s) are not named in the investigation.
- e. The timeline to submit a disclosure should be consistent with the current prior disclosure process in that an importer can file notification of a possible disclosure, be granted 90 days to conduct an internal investigation, and then file a full disclosure or withdrawal the notification, depending on the outcome of the investigation. Extensions of the 90-day period may be requested by the disclosing party. This will allow importers to secure the disclosure benefits early in their supply chain review process, conduct a thorough review, and take remedial action if necessary.
- f. For CTPAT partners, the existing benefit that allows for a disclosure to be made within 30 days of notification from CBP (as long as there is no ongoing investigation or consideration of fraud), should also be extended to violations of 19 USC 1307 and 19 USC 1595(a).

#### **010418**

Disclosure Benefits: COAC recommends CBP design a disclosure process that offers the following benefits in exchange for a company's voluntary disclosure:

- a. Companies that file a disclosure on past importations will be exempt from all penalties.
- b. If a company submits a disclosure, and, in addition to past importations, they have subject merchandise in transit to the U.S., that merchandise will not be subject to the seizure process. Instead, the company will be afforded the option of exporting or destroying the goods.
- c. For past importations where a CF 4647 Notice of Redelivery has been issued, a company will not be subject to liquidated damages penalties for failure to redeliver, if the subject goods are no longer available to be redelivered (for example, sold).

#### **010419**

Disclosure Factors: COAC recommends that CBP consider the following factors in evaluating and making a determination on the outcome of a disclosure:

- a. Company's level of cooperation with the CBP investigation.
- b. Company's demonstrated efforts to remediate issues pertaining to goods made with forced labor in regards to the specific supplier and associated facility such as the outcomes and history of previous social compliance audits, including corrective actions.

- c. Company's overall commitment and established social responsibility compliance program to combat forced labor in their supply chains including efforts to communicate requirements, provide training and guidance to their suppliers.

#### **010420**

Agency Alignment: COAC recommends that CBP coordinate with ICE to have similar disclosure processes for potential violations, violations, or any other criminal matter.

#### **010421**

Outreach: COAC recommends CBP publish a dedicated Informed Compliance Publication (ICP) on forced labor to include guidance on mechanisms to report forced labor allegations, investigations/WROs, due diligence, enforcement, prior disclosure, and mitigating factors.

### **Intellectual Property Rights (IPR) Working Group**

#### **Intellectual Property Rights (IPR)**

##### **Team 1 Recommendations on eRecordation**

Team 1 was created to examine matters related to the e-recordation portal and procedures for trademarks. The charter of the Team was to consider how a "clean-sheet" approach would manifest, and therefore reflect an idealized state of business process. Further exploration, as well as investment, in terms of people and/or budgetary expenditure, will be required to bring the recommendations from concept to reality. These recommendations reflect the Team's collective view about how to best accelerate cooperation between trade actors and CBP in a more coordinated and effective fashion to enforce IPR.

#### **010422**

##### **eRecordation System**

In support of prior recommendation #010374 to provide CBP with additional budget and resources, COAC recommends that CPB redesign the eRecordation system in which IPR enforcement is made more effective and efficient by:

- a. Allowing data to flow automatically from the registration of the IPR.
- b. Make it the hub for data upon which CBP can rely to target IPR violations
- c. Allow the system to be the hub for data from CBP
- d. The E-recordation system should be interactive, allowing CBP and IPR owners the ability to share information in real time.

### **Data Flows Automatically**

#### **010423**

Integration: COAC recommends CBP work with USPTO to have registration numbers flow directly from USPTO to the CBP Portal. Rights holders will select registrations for enhanced enforcement via the portal. Once selected, rights holders can assign contact information by groups of trademarks. Rights holders can provide information about authorized parties/licensees

for groups of marks or individual marks, as well as supplying information about known violators of all or certain marks.

## **Hub for Enforcement**

### **010424**

Enforcement Targeting: COAC recommends the new system be multi-functional. The new system should be the registry for enforcement targeting data such as:

- U.S licensees of the IPR
- Authorized manufacturing locations add actual name manufacturers
- Known offender data
- Unique identifiers or verifiable credentials that promote more secure trade by providing greater insights into importers of genuine articles and their histories
- IPR owner contacts associated with IPR to assist with determinations of authenticity

### **010425**

Brand Identification Guides: COAC recommends the system should make it easier for CBP to research and locate information filed by IPR owners such as brand identification guides. Using automation to allow CBP officers to enter a search term and be brought automatically to the relevant page of an IP owners Brand Identification Training Guide uploaded to CBP's systems. Right now, one visible problem is that frontline officers don't have the time to search through detailed brand manuals to find what they are examining. We need to make this easier for them.

### **010426**

Key Technology: COAC recommends data could be linked to keys that could be shared with brokers and then transmitted to CBP in the entry filing process in ACE. The keys would identify to the authorized licensee/importer (validate to IOR) and item level (to extent the holder loads this info). The key would link directly to the appropriate locations in the recordation database that could automate release or allow officers to very quickly make determinations. It shrinks the haystack and allows CBP to focus its efforts on potential bad actors. Also, it is essential that the system for maintaining the data is user friendly for SME's and automated for use by folks with lots of data to share.

## **Hub for Data from CBP**

### **010427**

Track and Trace: COAC recommends that CBP report the results of assistance rendered by IPR holders so that the latter can track and trace on a transaction basis from detention to seizure or release. With this information, IPR holders will know better how the assistance provided to CBP should be refined or improved.

#### **010428**

Data Sharing: COAC recommends Customs brokers have access to information about rights holders' recorded goods to help facilitate legitimate trade and automate their customer vetting processes. Brokers play an integral part in the Customs clearance process. As key trade partners to importers and CBP, brokers are equally concerned with ensuring the facilitation of legitimate goods and identifying bad actors. Access to information improves the broker's ability to properly vet their importer customers, identify bad actors and act as an effective force multiplier in preventing the importation of infringing goods.

#### **Vehicle for Real Time Communication with IPR Owners of Record and between CBP Offices**

#### **010429**

Real Time Communication: In support of prior recommendation #010356 COAC also recommends the electronic system be used to send and receive e-messages for purposes of authentication of detained goods. It can also be used for issuing notices of seizure to IPR holders. In either case, functionality could include the ability of IPR owners to request additional information such as photographs and samples. IPR bond information can also reside in the system. IPR owners who've recorded contact information can indicate e-mail addresses and mobile device IDs for purposes of automatic distribution of the above-mentioned messages from CBP.

Interim Recommendations: We visualize these as a process that can benefit from automation that does not immediately exists until CBP system can be automatically updated

#### **010430**

COAC recommends the elimination of trademark-by-trademark recordation. The IPR owner should be able to record multiples marks and trademarks simultaneously.

#### **010431**

COAC recommends as an interim step that the Automated Commercial Environment (ACE) be updated to carry the capability of recording IPR, including the renewal of marks as well as the expiration and renewal of license agreements, etc. thus alleviating the need for separate systems.

#### **010432**

COAC recommends that CBP look at existing systems that can be used to automatically notify rights holders of the seizure. This would save both time and money for CBP and rights holders compared to many notifications being sent via U.S. Mail. This could possibly be an interim solution and/or part of a long-term solution depending on the functionality of the systems.

#### **Team 2 Recommendations**

Team 2 was established to discuss and review recommendations for Data Sharing, the DHS Report on Trafficking and Pirated IPR goods, and the Presidential Executive Order on eCommerce. The recommendations developed by Team 2 are provided below.



## **Data Sharing**

In regards to automation and data sharing, the COAC previously submitted recommendation #010353 to automate the current paper process for seizures and detentions, #010375 to make the detention and seizure process more transparent and visible as allowed by law, and #010376 to build functionality in ACE that would allow the ability to see these notices and share information among approved parties. In further support of automation and data sharing, the COAC submits these additional recommendations.

### **010433**

**Blockchain:** COAC recommends that CBP pursue blockchain encryption technology based on the successful IPR Proof of Concept completed by the COAC Emerging Technologies Working Group. This will enable CBP, rights holders and importers to share and access database information in a secure and confidential manner so that items could be targeted or pre-cleared before arrival at the port of entry. Specifically, the rights holder would provide a database of identifiers for legitimate product. The data would be encrypted through Blockchain technology so that neither CBP nor the Importer would have access to the raw data, thereby ensuring confidentiality of the Rights Holder's intellectual property.

### **010434**

**Sharing of Detention Information:** COAC recommends that CBP automate the sharing of detention information, photographs, images and samples as provided for by current regulations. CBP regulations provide for disclosure of unredacted photographs, images and samples ("images") to the importer per 19CFR 133.21(a)(1) and to the IP owner per 19 CFR 133.21(b)(3), (c) and (e) but CBP has not adopted procedures to do the following allowed for under these regulations:

- Generate sharable images at the time of inspection
- Provide images to importers at the outset of the 7-day response period
- Provide images to intellectual property (IP) owners promptly following seizure
- Provide images electronically

### **010435**

**Photographic Standards Guide:** COAC recommends that CBP partner with brand holders to share and provide "photographic standards guides" to aid CBP Officers in taking the required photographs necessary to streamline and expedite the brand authentication process. This can help authenticate products that are detailed within 24-48 hours.

### **010436**

**Data-Driven CBP Seizure Process:** COAC recommends that CBP re-evaluate the current 25-point step seizure process to eliminate unnecessary steps and choose an expedited process for small parcels vs. pallets. An innovative, streamlined seizure flow would create more efficient identification, interdictions, and seizures. Particularly, the first six to seven steps could be combined through technology advancements. Expedited seizure should not eliminate ability to share information with the business community or target bad actors.

**010437**

Trusted IPR Vendor: COAC recommends that CBP authorize all Centers (Center) of Excellence and Expertise (Centers) to establish pilot programs for “Trusted IPR Vendor” lists which are good actors within the supply chain (i.e., importers and foreign suppliers). A Trusted IPR Vendor could be identified with a flag in ACE similar to the Broker Known Importer Program (BKIP) that attaches a flag to every entry an importer makes once “known” or approved as a Trusted IPR Vendor. A Trusted IPR Vendor could be defined as:

- a) A company which is authorized to import on behalf of a brand owner or;
- b) A company which has been identified directly by the Center as a Trusted IPR Vendor either directly or in conjunction with a third-party organization acceptable to the Center.

Companies wishing to be considered a Trusted IPR Vendor under either paragraph a) or b) above must agree to sign a Certification Agreement, agreed to by the Center and Industry, which would include the company’s agreements to certain criteria such as:

- a) Due diligence in sourcing goods to avoid counterfeit products
- b) Best efforts to avoid goods that were manufactured with forced labor
- c) Cooperation with U.S. Law Enforcement in any counterfeit investigation
- d) Quarantine goods identified as counterfeit

**010438**

Donation Acceptance Program: In support of COAC recommendation 010355, COAC recommends that CBP conduct more outreach with brand holders at least bi-annually to brainstorm on additional tools that are most helpful to CBP in counterfeit detection. This includes bar code scanners, mobile applications, and other broad-based technology that can assist CBP with authenticating a shipment in a matter of seconds. Donating enforcement technologies helps trade across the board. Sharing best practices or applications like third-party assessment tools streamlines and broadens information sharing, while decreasing the time required to catch the violative goods. This can also help streamline the seizure and detention process and allow CBP officers quick access to data to identify counterfeit products.

**DHS Report on Combatting Trafficking in Counterfeit and Pirated Goods**

In response to the Presidential Memo on Combatting Trafficking in Counterfeit and Pirated Goods, the COAC submitted public comments to the Department of Commerce under Docket Number 190703544-9544-01 at the following link:

<https://www.regulations.gov/document?D=DOC-2019-0003-0090>. On January 24, 2020, DHS finalized its report in response to the Presidential Memo and provided 11 recommendations to CBP as well as best practices for rights holders. The IPR Working Group reviewed and discussed the report to develop the following recommendations in response to it. However, due to the COVID-19 pandemic, the in-person meetings scheduled for the IPR Working Group on March 18th and March 19th were cancelled. As such, the COAC and IPR Working Group have not had

ample time to discuss the DHS Report with CBP and make the following high-level recommendations.

#### **010439**

Trade Collaboration: COAC recommends that CBP engage with COAC working groups to brief the trade on plans to comply with the DHS Report before policy and/or regulatory decisions are made. The report asks CBP to implement the DHS recommendations within 180 days, which is on or after July 24th, 2020. Although COAC has made some high level recommendations in the near term, there continues to be a need for discussion on the impact this report will have on the trade, the policy questions that need to be answered, the regulations that need to be modified, and the technology that's necessary to support the changes.

#### **010440**

Entry Type 86 Pilot: COAC applauds CBP on the successful implementation of this pilot to process millions of Section 321 entries that are under the \$800 de minimis value and recommends that CBP resolve the ongoing policy issues and unanswered question since the Noticed of Proposed Rulemaking was issued including but not limited to:

- a. Policy Guidance from the BIEC on the different PGA requirements for Section 321.
- b. Requirements for importer of record (when optional or mandatory), power-of- attorney (when required) Entry Type 86 transactions.
- c. A clear definition of "one person per shipment per day." How is one person defined and what person is legally authorized to do so within the supply chain?

#### **010441**

Section 321 Data Pilot: COAC has members who participate in the pilot and recommends that the pilot continue since the data being collected and provided to CBP through this pilot can be very beneficial. However, CBP has not had the opportunity to evaluate the data being received, and there is still a great deal of effort for the pilot participants to gather the data.

#### **010442**

Section 321 Enforcement: COAC recommends that CBP triangulate the data being collected from both pilot programs to identify enablers (whether knowingly or not) to establish a means to stop the product from being shipped to, or accepted at entry into the U.S. if coming from or through red-flagged entities.

#### **010443**

Co-Mingling: To address the challenges with co-mingling by eCommerce platforms with fulfillment centers, COAC recommends that CBP work with the Federal Trade Commission (FTC) to develop new policy and/or regulation that provides benefits if eCommerce platforms do the following:

- a) Include a mandatory country of origin field and require sellers/merchants to disclose the country of origin of the goods for every item being sold on the platform as required for all other commercial importations.

- b) Require a “verified source” tag which indicates that the seller/merchant does not allow co-mingling of its merchandise. This provides the buyer with an option to choose the authentic merchandise that is a “verified source” over one that is not on the platform.

#### **010444**

Foreign-Trade Zones (FTZs): In support of prior recommendation #010309, COAC recommends that CBP allow FTZs to be used for Section 321 shipments to increase visibility into these importations due to the recordkeeping, auditing and bonding requirements imposed on FTZs. Changes to U.S. informal-entry rules increasing the U.S. duty-free de minimis level for imported goods from \$200 to \$800 adversely impacted U.S. foreign-trade zone (FTZ) distribution operations by encouraging a shift of e-commerce fulfillment for the U.S. market to Canada, Mexico, and other foreign locations. Since the de minimis benefit is currently available only to foreign distributors but not to U.S. FTZs, COAC recommends that CBP work to make legislative changes to the 321 statute and FTZ Act to address the adverse impact of this change and assure that e-commerce operations can remain in the U.S. With the explosive growth of small-package delivery through e-commerce channels, moving even a portion of this trade through the stringent enforcement and compliance system of the FTZ program will help ensure that illicit goods, including products violating intellectual-property rights (IPR), do not enter the U.S. market.

#### **010445**

Public Outreach: COAC recommends that CBP take the following actions to increase consumer awareness of counterfeit merchandise:

- a) Share photos from raids globally that highlight some of the conditions where products are manufactured and marketed to consumers.
- b) Educate consumers on what best practices are working in other countries and focus on more violative health and safety issues. (e.g., best practices that France uses to enforce consumer purchases which are considered illegal if counterfeit). Increase outreach to consumers on the dangers of buying on-line utilizing joint industry/government campaigns with a stress on consumer safety.
- c) Increase outreach to consumers on the dangers of buying online utilizing joint industry/government campaigns with a stress on consumer safety.

#### **010446**

Suspend and Debar Repeat Offenders: COAC recommends that CBP program ACE to reject entries for any importers that are suspended or debarred from doing business with CBP as identified within any applicable database.

#### **010447**

Ensure Entities with Financial Interests in Imports Bear Responsibility: COAC recommends that CBP develop regulations and/or policy guidance that would define what is considered “high risk” shipments and when any additional bonding would be required for the party with a financial interest in the transaction so this could be managed in an automated fashion in ACE (preferably by HTS tariff number). Policy guidance is also necessary since Section 321 de minimis shipments under \$800 in value do not require an importer of record number or bonding,

unlike other transactions where this designates the party with the financial interest who is liable for complying with Customs laws and regulations. COAC further recommends that CBP consult with the trade to have more in-depth conversations on these requirements within the DHS report since they have far-reaching implications on the trade to effectively manage and identify the roles of the transacting parties in order to ensure compliance.

#### **010448**

**Action Against Non-Compliant International Posts:** COAC recommends that IPR brand holders be provided with a means to identify in ACE if they provide any approval for their importations to arrive via post or courier service. Many brand holders have strict instructions and a simple flag in ACE could provide a short-term solution for CBP to target that cargo prior to arrival to provide advance notice to brand holders that a shipment is arriving by post or courier, which may raise IPR concerns if the brand holder did not provide approval for such transit.

#### **010449**

**BIEC Engagement:** COAC recommends that CBP conduct regular inter-agency meetings with the United States Postal Service as part of the BIEC as well as CBP's outreach and relationship building with other Partner Government Agencies to address Section 321 compliance, IPR facilitation and enforcement to ensure that similar data sets are required with both the public and private post as other modes of transportation via air, ocean, truck, etc.

### **Presidential Executive Order on Ensuring Safe & Lawful eCommerce**

#### **010450**

When developing regulations to respond to this Executive Order, COAC recommends that CBP consider it already has authority under 19 CFR 111.5 and 19 CFR 111.74 to begin proceedings to suspend or revoke a customs broker license or issue a monetary penalty for violations, which provides for due process. CBP also has authority to issue monetary penalties under Section 116 of the Trade Facilitation and Trade Enforcement Act (TFTEA) for which CBP has already issued a Notice of Proposed Rulemaking. COAC encourages CBP to utilize these processes and procedures to the greatest extent possible to address the enforcement issues raised in the Executive Order.

### **RAPID RESPONSE SUBCOMMITTEE**

#### **U. S. MEXICO CANADA (USMCA) Working Group Recommendation**

#### **010451**

COAC recommends that CBP, the USTR and its USMCA partners should delay USMCA's entry into force until no earlier than January 1, 2021 and provide a transition or implementation period for the year where NAFTA qualifying goods with appropriate certificates of origin will be considered to comply under the USMCA. Now is not the time to implement a trade agreement that contains so many important and meaningful changes that will impact certain industries in a significant financial manner. The trade simply is not, and will not be, ready to shift from NAFTA to USMCA on June 1, 2020.

**010452**

COAC recommends that should the USMCA enter into force as scheduled, at the very least, CBP and its USMCA partners should grant enforcement discretion by way of an informed compliance period until the trade has had reasonable time to implement each administration's regulatory and automation requirements.

**COVID-19 CBP & PGA Regulatory Discretion**

Interim Recommendations: We visualize these as a process that can benefit from automation that immediately exists until CBP system can be automatically updated

**010453**

Duty & Revenue Collection: COAC recommends that CBP should relax and in effect "compromise" and be flexible in its collection of duties, fees and taxes to the greatest extent possible to assure the economic health and stability of the trade and logistics industry.

**010454**

Communication & Notification: COAC recommends that CBP and the PGAs should adopt a consistent, clear and transparent communication process to share and receive vital information from stakeholders leveraging technology whenever possible.

**010455**

1 USG Approach: COAC recommends that the government agencies impacting trade and logistics must adopt a 1 USG approach, incorporating the BIEC, to ensure trade flows continue despite multi-jurisdictional admissibility and/or revenue collection requirements.

**010456**

Inspection & Enforcement Discretion: COAC recommends that except for life threatening concerns or egregious violations during the national emergency, CBP should exercise its discretion to inspect cargo and to engage in informed as opposed to enforced compliance and mitigate or cancel claims altogether where such non-compliance does not pose a threat to consumer health, safety or welfare.

**July 15, 2020**

**SECURE TRADE LANES SUBCOMMITTEE****Export Modernization Working Group Recommendations****010457**

COAC recommends that CBP work with other government agencies to review and compare the Electronic Export Information (EEI) and Air, Ocean and Rail Manifest data elements by name and definition to identify duplicative and unnecessary data elements.

**010458**

COAC recommends the unnecessary data elements identified between the EEI and Air, Ocean, and Rail manifest be eliminated.

**010459**

COAC recommends the duplicative data elements identified between the EEI and Air, Ocean, and Rail manifest be only required from the owner of the data since it is the most timely and accurate source, e.g., departure date.

**010460**

COAC recommends CBP provide a data-flow and process-flow map for all government agencies defining where data originates such as the EEI, the Manifest, and Departure messages e.g., Carrier owned data comes from the Manifest message.

**In-bond Working Group Recommendations****010461**

COAC recommends that CBP accept the White Paper as the basis of an In-bond modernization strategy. The white paper identifies key issues including trade and CBP visibility to all In-bond transactions, clarity of liability for bonded partners, the need for automated hand-offs between trade partners, addition of all modes of transportation to automation requirements, national policy harmonization and short term technical requirement changes to improve the current process, and align with the 21st Century Customs Framework. The document provides strategic level solutions that will support movement toward regulatory changes, policy changes and / or technical changes across these issue areas. The In-bond White Paper is a working “living” document and will be modified and updated as solutions to the issues raised solidify, and give rise to future recommendations.

**Remote and Autonomous Cargo Processes Working Group Recommendations****010462**

COAC recommends that CBP establish a multi-tiered Free And Secure Trade (FAST) program/process that allows for FAST eligible drivers to take advantage of the FAST infrastructure when driving for a Customs and Trade Partnership Against Terrorism (CTPAT) approved carrier regardless of other parties in the supply chain being CTPAT certified. Through the tiered approach, using a FAST card and a FAST manifest, the driver will be able to take advantage of the FAST lanes, automating a portion of the data and thereby expediting the cargo release process and avoiding longer wait times associated with non-FAST freight.

**010463**

COAC recommends CBP continue efforts to invest in and enhance existing Decal & Transponder Online Procurement System (DTOPS) and the new Gen-2 RFID transponders and infrastructure which supports Non-Invasive Inspection (NII), FAST manifest data and additional efficiencies in remote and autonomous cargo processing.

**010464**

COAC recommends CBP support expanding the use of vetted International Crews crossing land borders on the rail. Such International Crews eliminate the need to switch crews at midbridge at the border allowing for autonomous movement of goods, increasing security, saving time and therefore increasing capacity. This crew would need to be allowed to turn around at the US rail

yard, inside the port, within an agreed upon distance from the land border with the rail carrier. Successful Pilot Programs at the port of Laredo should be expanded to other ports.

**010465**

COAC recommends CBP support the expansion of image technology for trains crossing land borders, e.g. Non-intrusive Image (NII) technology, and leveraging partnerships through the Donation Acceptance Program (DAP). This technology has proved to reduce time by remote and autonomous processing of cargo.

**010466**

COAC recommends CBP continue to look to the future by supporting additional bridge expansions that allow for autonomous cargo processing, whether rail or truck, at land borders. One example is the proposed expansion of the rail bridge at the port of Laredo to allow North and South bound international rail traffic. Retaining this rail connection along the secure rail corridor between the rail yards is essential to international rail operations in and around Laredo and Nuevo Laredo. Another example is the additional bridge being constructed near Detroit to relieve congestion.

**Trusted Trader Working Group Recommendations**

**Development of metrics to measure the performance of benefits for both CBP and Trade:**

**010467**

COAC recommends that CBP develops a list of the most important quantifiable indicators (both for CBP and Trade) related to the benefits of participating in the Trusted Trader program and develops a mechanism to measure them consistently and periodically.

**010468**

COAC recommends that CBP develops a metrics' dashboard or report available to each Trusted Trader account, which incorporates key metrics related to their specific Trusted Trade Program benefits. (e.g. Number of inspections, average of exams, detentions, etc.)

**010469**

COAC recommends that CBP issues the benefits metrics' report on a periodic basis (e.g. quarterly) and it is uploaded in the Trusted Trader CTPAT portal account for easy access.

**010470**

COAC recommends that CBP also publishes at least on an annual basis, a metrics report on CBP's website and accessible to the public, with general CTPAT Trusted Trader Program benefit statistics. For instance, CBP could publish the average percentage of extensive examinations, and in-person validations that non-CTPAT Trusted Trader companies experienced vs program participants, etc.



## **Evaluation of Existent CTPAT Trusted Trader Program Benefits**

### **010471**

COAC recommends that CBP develop a methodology to evaluate the performance and value added to trade and CBP of existent CTPAT Trusted Trader program benefits and determine when a benefit should be phased out or needs to be modified, based on the assessment results. For this effort, COAC recommends that CBP continues to partner with external expert organizations such as the University of Houston, U.S. Government Accountability Office (GAO), etc. to run an independent assessment that evaluates the efficiency and relevance of existent CTPAT Trusted Trader benefits every two or three years (the time that it takes on average for new benefits to be fully implemented). The results of the assessment should be made public and incorporate feedback from Trusted Trader accounts.

## **Visibility and communication of the implementation status and deployment timeline for CTPAT- Trusted Trader benefits.**

### **010472**

COAC recommends that CBP communicates periodically (e.g. quarterly) the implementation status of approved benefits, expected deployment timeline for Trusted Trader members, and adjustments to estimated completion dates when applicable. The updates on the implementation should be available to the public at CBP's CTPAT webpage.

## **Consideration of new potential benefits (both from CBP and Trade)**

### **010473**

COAC recommends that CBP develops and documents a formal process to receive and process feedback on existent benefits, as well as suggestions for new potential benefits from both CTPAT Trusted Trader Program members, Participating Government Agencies (PGAs), non-governmental organizations (NGO's) and the general public.

### **010474**

COAC recommends that CBP expands its current process of receiving comments via the general CTPAT information email, and develops guidance on the most efficient mechanism that the trade and other parties should use to submitting feedback on existent benefits and potential new benefits for consideration. Some options CBP could consider are an e-submission form through CBP's CTPAT website, a comments/suggestions box through the CTPAT portal, etc. CBP should also consider a 'once a year' open period for public comments on existent and potential new benefits.

### **010475**

COAC recommends that as CBP evaluates and considers potential new benefits, it should open a 'public comment' period to the public, sharing the benefits that are being considered and requesting additional input to be included in the evaluation process.

### **010476**

COAC recommends that CBP's process for evaluation of new benefits balances the enforcement value and the return on investment for trade of the particular benefit.

CTPAT's Trusted Trader Program Benefits Methodology (Consideration of new benefits, evaluation of existent benefits, and metrics) should be documented and available to the public.

**010477**

COAC recommends that once CBP adopts and implements the Trusted Trader Program Benefits methodology recommendations, CBP documents the end to end process and includes it as a reference document available in the CTPAT- Trusted Trader Handbook and CBP's CTPAT Webpage.

**INTELLIGENT ENFORCEMENT SUBCOMMITTEE**

**Forced Labor Working Group Recommendations**

**010478**

**Recognition for Withhold Release Order (WRO) Remediation**

COAC recommends CBP exercise discretion when considering how and when to carry out enforcement responsibilities for 19 USC 1307, particularly prior to issuing a WRO. CBP should take into account when the importing community is making genuine efforts to conduct due diligence and active remediation as the agency makes decisions about how and when to issue a WRO, including considering utilizing grace periods during which CBP provides alerts and/or guidance to allow the problem to be sustainably resolved before issuing a WRO. Remediation is only viable when the importing community maintains the necessary business leverage and the supplier is financially stable.

**010479**

**Enhanced Collaboration between Industry & United States Government (USG) to identify known forced labor risks**

COAC recommends enhanced collaboration with industry experts, civil society and other USG agencies to utilize existing resources including, but not limited to the Department Of Labor (DOL) List of Goods Produced by Child or Forced Labor and the Department of State (DOS) Trafficking in Persons Report in order to identify, prioritize, communicate and partner on known forced labor risks. See related recommendations 10112 and 10119 presented on 11/16/2016 and 10287 presented on 11/4/2017.

**010480**

**Enhanced Collaboration between Industry & USG to address highest forced labor risks**

COAC recommends that CBP recognize and implement the need for a risk-based approach, including targeting enforcement action on known high risk areas based on tangible data and information, in consultation with civil society, the private sector and other parts of the USG in order to address the worst abuses.

**010481**

**Withhold Release Order (WRO) Process Considerations**

COAC recommends CBP meaningfully engage all relevant stakeholders (affected individuals, United States Government (USG), private sector, civil society, etc.) prior to issuing a WRO to help avoid unintended consequences related to its actions. This will ensure other USG agencies

with proper authority can take proper action to protect those that may be affected, which may include personal protection, health care, legal aid, psychological assistance and referrals.

#### **010482**

##### **International Labour Organization Standards**

COAC recommends CBP, through its interagency efforts related to forced labor with the U.S. Government, respect, promote and realize the International Labour Organization (ILO) Declaration on the Fundamental Principles and Rights at Work to foster greater enforcement and implementation of human rights laws at the national level. To the extent possible, promote alignment with the ILO Convention 29 and 2014 Protocol on forced labor.

#### **010483**

##### **Information Sharing**

COAC recommends that CBP, through its interagency efforts related to forced labor with the U.S. Government, assist US importers with deeper visibility in the supply chain by sharing experiences, resources, and tools utilized to access information about forced labor risk in upstream levels of the supply chain that may be less accessible to importers.

##### **Bond Working Group Recommendations**

#### **010484**

Customs Bond Directive: In support of prior recommendation 10095, COAC recommends that CBP update Customs Directive 3510-004 prior to the next COAC meeting scheduled in October 2020. This directive was issued in 1991 and has not been updated to reflect the current environment in ACE for single transaction bonds and other bond types.

In addition, the directive does not provide uniform guidance to determine the amount of Foreign Trade Zone (FTZ) Bonds per recommendation 10307 or Pipeline Operators per recommendation 10338. COAC recommends the Customs Directive be updated to include the following changes:

- a) Pipeline Operators should be defined so it is clear which bonds are required to transact business.
- b) FTZ Operators should have a defined continuous bond formula that all ports can follow uniformly, subject to a \$50,000 minimum per current regulation. The Bond Working Group provided several suggestions for bond formulas CBP can consider given the very low risk of duty exposure and loss experience including:
  1. \$50,000 minimum + \$10,000 per additional FTZ location.
  2. 10% of the duty liability for the goods stored in the warehouse based on the daily snapshot of FTZ inventory.
  3. 3% of the value that is dutiable based on the daily snapshot of FTZ inventory.

## **Antidumping and Countervailing Duty (AD/CVD) Working Group Recommendations**

### **010485**

#### **Presidential Executive Order**

COAC recommends that CBP evaluate whether the Presidential Executive Order (EO) 13924 issued on Regulatory Relief to Support Economic Recovery provides CBP with the authority to honor refunds for trade remedy exclusions even if they were issued beyond the period of time to request an extension of liquidation or file a protest. Currently, hundreds of importers are missing the opportunity to receive refunds on trade remedy exclusions that are issued so late that no administrative relief is available to process the refund. During the COVID-19 pandemic, this is causing tremendous economic hardship, especially on small to medium-sized businesses.

### **010486**

#### **Future Considerations**

COAC recommends that CBP work with United States Trade Representative (USTR), Congress and appropriate parties to provide authority for legislative changes that will modify the timeframe to file a refund request for trade remedy exclusions and/or consider whether the Reconciliation Program could be a viable solution for future Trade Remedies. Doing so would provide importers with the opportunity to finalize their entry once the Exclusion Order is approved or have additional time to file a protest if the 180 days from liquidation has expired. There has been prior precedence for this under the Generalized System of Preferences (GSP), which gets reinstated after long periods of expiration because these entries are flagged in ACE to process once GSP is approved by Congress. Entries subject to trade remedy exclusions could be flagged in a similar manner as Reconciliation Entries, which would eliminate the time-consuming process to file Post Summary Corrections (PSCs), extensions of liquidation, and/or protests.

### **010487**

#### **Protest Training**

COAC recommends that CBP conduct a webinar on best practices to file protests in ACE. Due to the large influx of protests that are being filed for trade remedy exclusions, some protests are being denied for minor reasons or missing information. During a webinar, the trade would be able to ask questions about the challenges they are having providing information through the ACE portal and tips to ease the administrative burden on all parties. The AD/CVD Working Group has submitted a list of topics that could be covered during this webinar in Appendix C of our background paper.

### **010488**

#### **CBP/USTR Coordination**

COAC recommends that USTR coordinate with CBP to ensure that changes to trade remedy exclusions (when they are sunset, extended, revised, etc.) are presented to the trade with adequate notice to understand duty implications. Further, USTR should ensure that its changes are timely communicated to CBP and the industry to complete the necessary ACE programming to implement the changes in a timely manner so exclusions can be claimed at the time of entry.

## **Intellectual Property Rights (IPR) Working Group Recommendations**

### **010489**

#### **IPR Restricted and Prohibited Parties List**

COAC recommends that CBP should seek and obtain the legal authority to create and enforce a comprehensive “IPR Restricted and Prohibited Parties List” (hereinafter called the IPR RPP List) consisting of foreign and domestic parties (*i.e.*, individuals, companies or organizations) who are known offenders due to repeat violations. There are troves of information about counterfeiters by the trade, CBP, ICE and other agencies that can be put to more effective use through a consolidated approach and system. Known counterfeiters like terrorists, proliferators, and other bad actors, present a threat to U.S. health, safety, security, and the economy. The IPR RPP List would serve to deter and reduce the numbers of de minimis (Section 321) as well as other informal and formal entries of counterfeit shipments flooding the country.

### **010490**

#### **Public Lists**

COAC recommends that CBP create and enforce the IPR RPP List based on the successful use of other lists created for “denied parties” from entities such as Bureau of Industry and Security (BIS), Directorate of Defense Trade Controls (DDTC), Office of Foreign Assets Control (OFAC) and CBP’s own Debarred or Suspended Importers list.

### **010491**

#### **CBP IPR Database Portal**

COAC recommends the IPR RPP List be developed with information that contains data from numerous sources including the IPR rights holder’s own internal investigations. This list would be housed in a new CBP IPR Database Portal, and would complement CBP’s IPR eRecordation Application, which serves as CBP’s system of record for IPR administration and enforcement.

### **010492**

#### **IPR RPP List Criteria**

COAC recommends CBP develop a process and criteria to place parties on the IPR RPP List based on information gleaned from the CBP IPR Database Portal as well as CBP’s own internal resources from IPR Seizure Statistics at <https://www.cbp.gov/trade/priority-issues/ipr/statistics> and targeting intel. Such criteria should be made public and consider violations, such as:

- a. Shipments without valid licensing agreements (if required)
- b. Repeat offenders with more than three (3) seizures and/or uncontested detention notices.
- c. Foreign shippers or resellers, including marketplaces, with knowledge of violative goods even if consolidated and co- mingled with legitimate merchandise due to repeat violations.
- d. Any seizures reported on CBP’s annual IPR Seizure Statistics report, which currently only provides commodity, country of origin, and value details, not any list of the violators.

#### **010493**

##### **Trusted IPR Vendor List**

In support of prior recommendation 10437, COAC recommends that CBP should complement the IPR RPP List with a Trusted IPR Vendor list. In addition to the criteria from our prior recommendation, CBP could also consider the receipt of ruling requests from the trade community concerning prospective transactions. Under 19 CFR Part 177, the Office of Regulations & Rulings may issue binding rulings or internal advice with respect to a specifically described transaction that constitute a definitive interpretation of applicable law.

#### **010494**

##### **Appeal Process**

COAC recommends that CBP develop an appeals process to allow for parties to be removed from the IPR RPP List and ensure due process. The appeal process should be made public and consider the criteria to be removed from the IPR RPP List and timeframe for doing so to avoid unnecessary hardship on the trade. Such criteria should include:

- a. Party provides receipt of proper IPR licensing
- b. Party changes sourcing to an approved or licensed supplier or distributor
- c. Party can remove violative goods from co-mingled shipments and correct problems with co-mingled and/or consolidated shipments

#### **010495**

##### **Publicly Available**

COAC recommends that CBP make the IPR RPP List publicly available, like the BIS, OFAC, and other lists. The IPR RPP List should include the entity names and addresses and be downloadable so these lists can be managed in proprietary software for vetting purposes.

#### **010496**

##### **ACE Integration**

Similar to recommendation 10446, COAC recommends that CBP program ACE to reject any entries for any parties on the IPR RPP List and have an automated process to remove them from the list through the appeals process.

#### **010497**

##### **STOP Act**

COAC recommends that CBP promulgate regulations to implement and enforce the requirements set forth in the Synthetic Trafficking and Overdose Protection (STOP) Act. Such regulations should ensure that the United States Postal Service (USPS) provides advance electronic data for risk assessment of mail parcels that enter the United States, with the level of information provided comparable to that already required of inbound air cargo. Additionally, as CBP further develops its e-commerce strategy and contemplates the potential adoption of new data requirements for e-commerce shipments, it should ensure that such requirements are applied simultaneously in the cargo and mail environments. In particular, COAC recommends that additional requirements not be placed on any cargo until the technical, legal and practical barriers for mail data requirements have been resolved satisfactorily, such that advance data

requirements— both current and new—can be mandatorily applied to mail shipments arriving in the U.S. Finally, as part of its ongoing COAC e-commerce and IPR work, CBP should collaborate with COAC and/or Working Groups dedicated to the topic of advance data for mail in order to consult and issue recommendations in this regard.

## **RAPID RESPONSE SUBCOMMITTEE**

### **Broker Exam Modernization Working Group Recommendations**

#### **010498**

COAC recommends that CBP provide a paper based exam in lieu of the electronic exam for the October 2020 (including the rescheduled April 2020) exams due to the challenges of the current COVID19 emergency and the possibility that a resurgence of cases could force states to maintain or reinstitute closure orders which could limit gatherings to ten (10) or fewer people so an electronic exam would not be available or feasible locally.

#### **010499**

COAC recommends that CBP identify additional government locations where the current CBP Proctor will offer the paper exam which accommodates the space for proper social distancing. If the government locations are unable to accommodate the anticipated number of exam participants, CBP should allow alternate private sector locations within 30 miles of the CBP ports of entry. Selected private sector locations would provide for a CBP Proctor and/or CBP direct oversight.

#### **010500**

COAC recommends that CBP outline the minimum criteria for private sector locations to ensure that the exam experience is standard across all locations with social gathering guidelines based on state or local municipality procedures. This should include sanitation standards, equipment, access, etc.

#### **010501**

COAC recommends that CBP work with the Proctor to ensure a minimum of one (1) hour between the first and second examination sessions in order to sanitize the facilities and equipment to the required standards and allow adequate set-up time for exam takers, including accommodating those with disabilities.

## **October 7, 2020**

## **INTELLIGENT ENFORCEMENT SUBCOMMITTEE**

### **Forced Labor Working Group Recommendations**

#### **010502**

COAC recommends that CBP implement the core concepts outlined in the Forced Labor Working Group E-Allegations Background Paper related to enhancing system capability and intuitiveness of the e-allegations portal.

**Webpage:** <https://eallegations.cbp.gov/Home/Index2>

**FLWG Background Paper:**

<https://www.cbp.gov/sites/default/files/assets/documents/2020-Oct/IE%20Forced%20Labor%20Working%20Group%20E%20Allegations%20Background.pdf>

**010503**

COAC recommends that CBP increase collaboration with civil society and other U.S. government agencies (e.g. DOL, ICE, etc.) to encourage the use of the e-allegation portal as a primary tool for submitting forced labor allegations and develop an awareness campaign (webinars, trade symposiums, international conferences, fact sheets, etc.) to increase awareness and adoption of the e-allegations portal for suspected forced labor violations.

**010504**

COAC recommends that CBP increase transparency on the process for receiving, investigating, processing, and closing forced labor allegations, including estimated timelines, notification and engagement of progress to the reporting party. Additionally, COAC recommends that CBP develop and publish how the entire e-allegations process works for handling petitions submitted to CBP regarding forced labor allegation submissions, etc., in line with the mandates for the USMCA Forced Labor Task Force established.

**010505**

COAC recommends that CBP share up to date and recurring metrics about Forced Labor allegations submitted through the e-portal and other mechanisms. Current metrics published are very general and outdated. Furthermore, they do not provide any meaningful information (e.g. per CBP's Forced Labor webpage 'as of 2019 there have been 8 FL violation allegations submitted through the e-portal'). COAC recommends that CBP identify the statistics that can be shared to the public while complying with confidentiality laws.

**SECURE TRADE LANES SUBCOMMITTEE**

**Export Modernization Working Group Recommendations**

**010506**

COAC recommends that CBP work with Census and others to define a clerical error versus a material error for both EEI and manifest filing and issue appropriate guidance to CBP Personnel. When unintentional clerical errors are present, CBP should contact the filer for correction in lieu of issuing a penalty.

**010507**

COAC recommends that CBP in cooperation with Census and others, develop and conduct mandatory training on export enforcement for CBP personnel consistent with recommendation 10098, originally presented July 2016.



## **In-bond Working Group – Recommendations**

### **010508**

COAC recommends that CBP update the In-bond regulations to eliminate the unnecessary closure of active bonds and filing of subsequent In-bonds. Instead, a single In-bond should be able to be transferred among bonded parties, with liability for the In-bond shipment moving along with the physical transfers.

### **010509**

COAC recommends that CBP reprogram ACE to allow for the posting of CBP hold and release messages related to In-bonds against the house bill level, and the further the ability to query ACE notifications at the house bill level.

**December 16, 2020**

## **SECURE TRADE LANES SUBCOMMITTEE**

### **In-bond Working Group Recommendations**

### **010510**

COAC recommends updating the In-bond authorization date in ACE to reflect the actual physical arrival of the conveyance at the first port of arrival. Due to the importance of the Immediate Transportation (IT) date for duty calculations and other concerns about the IT date and the timelines it triggers, this will ensure the In-bond date in ACE accurately reflects the regulations.

## **Trusted Trader Working Group Recommendations**

### **010511**

COAC recommends that in the event CBP proceeds to launch the CTPAT Trade Compliance Forced Labor Program without the guidance of the forced labor NPRM, that CBP and COAC collaborate to draft the Forced Labor criteria based on certain critical assumptions that build in flexibility, enabling CBP to modify the criteria once it is clear whether those assumptions accurately reflect the final legal and regulatory requirements (e.g., whether there is a prior disclosure process affording mitigation or not; whether particular information will be required to respond to WROs and findings or not; whether specific mitigating factors will be considered for penalties or seizures or not; etc.). In this way, the CTPAT Trade Compliance Forced Labor Program will recognize the above and beyond practices in relation to the established legal and regulatory requirements that compliant importers maintain.

### **010512**

COAC recommends that CBP collaborate with COAC to clarify the types of audits or reviews to which trusted trader partners may be subject regarding compliance, including forced labor. While the CTPAT Trade Compliance Program recognizes that members should not be subject to focused assessments, because the Regulatory Audit and Agency Advisory Services (RAAAS) Division more commonly uses Risk Analysis & Survey Assessments (RASAs) or Quick Response Audits (QRAs) this would help trusted traders better set expectations as to how their partnership status may or may not impact CBP audits or reviews to detect prohibited, illegal importations, or just for information collection and program analysis purposes.

**010513**

COAC recommends that CBP collaborate with COAC to consider the ability to work across CBP program offices to have a coordinated, abbreviated, and streamlined Risk Analysis & Survey Assessments (RASAs) process for CTPAT Trade Compliance members to include the Center of Excellence & Expertise (Center) Partnership Branch, the CBP National Account Manager, and Regulatory Audit and Agency Advisory Services (RAAAS) Division, so that the process takes advantage of the existing information CBP may have on the partner's business operations.

**010514**

COAC further recommends that CBP collaborate with COAC to consider how such Regulatory Audit and Agency Advisory Services (RAAAS) Division inquiries or audits in forced labor or other compliance areas may be leveraged in whole or in large part to satisfy the CTPAT Trade Compliance, including forced labor, standards where the Risk Analysis & Survey Assessments (RASAs) requires importers to demonstrate implementation of the proper procedures and controls also required under the CTPAT Forced Labor and other Trusted Trader programs.

**010515**

COAC recommends that CBP continues working with the TTWG on developing the Forced Labor criteria for the CTPAT-Trade Compliance Program, with a balanced approach to enforcement, better allocation of resources and partnership to distinguish low and high risk importers; considering the three sets of recommendations that the COAC previously submitted for consideration in February 2019, August 2019, and July 2020. The recommendations previously submitted to CBP, provide guidance and suggestions about CTPAT's Trade Compliance Strategy and core elements of the voluntary CTPAT Trade Compliance Program, such as suggested benefits, metrics, and voluntary disclosure mechanisms.

**March 17, 2021**

**INTELLIGENT ENFORCEMENT SUBCOMMITTEE****Intellectual Property Rights Working Group Recommendations**

In further support of recommendation #010434 to support sharing of detention information

**010516**

COAC recommends when CBP has suspicions of IPR violations triggered by something seen on the goods or their packaging, the image(s) should be shared with the importer of record prior to detention or with the notice of detention.

**010517**

COAC recommends CBP should adopt consistent procedures to make images readily available and transmitted to the rights holder quickly after receipt of a request, especially when images were produced at the time of inspection while CBP is making decisions.

**010518**

COAC recommends CBP notify the rights holder of its decision when redacted images are shared with the rights holder prior to the seizure.

In further support of recommendation #010435 to develop a “photographic standards guide.

**010519**

COAC recommends the “Photographic Standards Guide” define specific requirements relating to image file type(s), such as minimum standards for product, interior and exterior packaging and label photos (as allowed by regulations), and acceptable delivery methods via electronic means. COAC also recommends expediting the distribution of the guide in PDF format to be posted on cbp.gov for all parties to access.

**010520**

COAC recommends CBP develop a web application that guides the photo-taking process, verifies quality, and creates standard formats for the images to simplify information sharing with importers and rights holders.

To further support recommendation #010436 to have a more data-driven CBP seizure process.

**010521**

COAC recommends CBP integrate technology within the seizure process by furnishing appropriate mobile hardware and software to officers and import specialists to support swift decision making.

**010522**

COAC recommends CBP use a single reference number (e.g., entry number) to consistently track shipments through the entire exam, detention, and seizure process.

**010523**

COAC recommends CBP address the significant increase in small parcel shipments by supplementing CBP officials, as appropriate, specifically at International Mail Facilities to inspect packages.

**Forced Labor Working Group Recommendations**

**010524**

COAC recommends CBP take a collaborative, multi-agency approach as forced labor laws, regulations, outreach and enforcement spans multiple government agencies such as the Department of Homeland Security; Immigration and Customs Enforcement; Department of Treasury; the Department of Labor, International Labor Affairs Bureau; Department of State’s Bureau of Democracy, Human Rights and Labor, Trafficking in Persons Office, Office of the U.S. Trade Representative, and the Economic and Business Affairs Bureau, etc. Including collaboration initiatives between the US and international agencies (e.g. U.S. Foreign assistance programs) directed to mitigate forced labor practices at the source countries with localized government’s enforcement. CBP should utilize the expert resources of all relevant US government agencies to develop a synchronized strategy as well as engage more extensively in dialogue and priority setting with the trade.

**010525**

COAC recommends CBP expand its collaboration and communication with trade sectors/industries, identifying and sharing best practices, including government to industry efforts to minimize forced labor in supply chains as highlighted in the ‘Industry Collaboration White Paper ’ submitted during COAC’s public meeting July 2020.

**010526**

COAC recommends, consistent with GAO 2020 Forced Labor Imports Report and as a broader interagency and trade sector strategy, CBP develop an objective methodology to measure ‘success’ in combatting forced labor in the supply chain. Successful measures should be based on outcome metrics (whether enforcement actions actually result in a reduction of or the elimination of forced labor, at the locations of alleged violators) that ultimately focus on the improvement of the communities this illegal practice most impacts, rather than the number of withhold release orders and detentions issued.

**010527**

COAC recommends CBP apply the same principles, tools, guidance and outreach to forced labor as is the case with the other PTIs, that is, “world class expertise to design trade processes and policies that minimize cost and provide certainty, transparency, security, and predictability to members of the trade community.” <https://www.cbp.gov/trade/priority-issues>

**June 23, 2021**

**SECURE TRADE LANES SUBCOMMITTEE****Export Modernization Working Group Recommendations****010528**

COAC recommends CBP incorporate the Export Modernization Working Group White Paper – “*Export Operations for the 21st Century*,” in its entirety, including appendices, which outlines details and processes, into the 21st Century Customs Framework.

**010529**

COAC recommends CBP update electronic manifest requirements as addressed in the Export Modernization Working Group White Paper and expand the current electronic manifest pilot to full operational status at all ports.

**010530**

COAC recommends CBP modify appropriate CBP, Census Bureau and PGA regulations to accommodate the envisioned “Export Operations for the 21st Century” as recommended in the Export Modernization Working Group White Paper.

**010531**

COAC recommends CBP lift the moratorium on Post-Departure filing for new applicants and expand the filing process to approved exporters (U.S. Principal Party in Interest) based on the enhanced security provided by the electronic manifest filing and as recommended in the Export Modernization Working Group White Paper.

## **INTELLIGENT ENFORCEMENT SUBCOMMITTEE**

### **Bond Working Group Recommendations**

#### **010532**

##### **Importer Security Filing (ISF) Bonds**

COAC recommends that Activity Code 16 ISF Single Transaction Bonds (STBs) operate the same as Activity Code 1 eSTBs allowing customs brokers to create their own unique “entry number” that contains their assigned filer code through their Automated Broker Interface (ABI) system. The ISF Filer would create the unique ISF Transaction Number in the same fashion with their Filer Code or SCAC Code for identification. This would eliminate the cumbersome multi-step process today that does not have any logic to match the bond to the ISF transaction. This would also guarantee a bond is on file to cover the ISF transaction since today’s process allows the ISF transaction to be filed before the eSTB is filed. Lastly, this would also allow sureties to receive their ISF data real time like their entry data via the Automated Surety Interface (ASI). Currently, there are over 100,000 ISF STBs issued annually without any matching functionality to protect the revenue of CBP equating to millions in exposure.

#### **010533**

##### **Department of Transportation (DOT) Bonds**

During the COAC meeting on October 29, 2015, the IUSG Subcommittee put forth recommendation 14033 that “CBP should implement an eBond process for DOT Bonds.” The COAC Bond Working Group supports this recommendation because doing so helps complete the data required for PGA message sets and ACE functionality. This recommendation was never implemented and should be revisited. Currently, the DOT Bond is only uploaded to the Document Imaging System (DIS) with no verification of the bond or matching to the Partner Government Agency (PGA) message set. Currently over 100,000 DOT Bonds are processed annually without any oversight, matching logic, or visibility to CBP.

#### **010534**

##### **International Trade Commission (ITC) Bonds**

COAC recommends including ITC bonds in the eBond process. While ITC bonds are infrequent when compared to other bond types, people within CBP along with members of the trade (importers, customs brokers, and sureties) are unfamiliar with the processing and acceptance of these bonds and that can lead to errors in bond execution. This is further compounded by the fact that when these bonds are required, they may impact thousands of entries because a single transaction bond is required to be filed with each entry for goods that are covered by an exclusion order.

#### **010535**

##### **Intellectual Property Rights (IPR) Bonds**

COAC recommends including IPR Bonds in the eBond process. Although IPR Bonds are infrequent when compared to other bond types, they are labor intensive for the CBP Bond Team to manage under the current process. It would be a more efficient use of CBP’s resources to simply have sureties input the IPR Bonds via eBond in both continuous and single transaction instances so CBP’s Bond Team can focus their attention on analytical review of the various aspects of importer bond compliance.

**010536****Regulatory Rewrite**

COAC recommends that CBP prioritize issuance of a Notice of Proposed Rulemaking to finalize the regulatory rewrite for 19CFR113 that incorporates language to support the above referenced bonds in the ACE eBond module, completes the eBond Test, provides national visibility to CBP of all remaining bond types, and ensures sureties receive all data attached to each bond type electronically through real time Automated Surety Interface (ASI).

**16<sup>th</sup> Term Commercial Customs Operations Advisory Committee****March 31, 2022**

No recommendations were presented at this meeting.

**June 29, 2022****INTELLIGENT ENFORCEMENT SUBCOMMITTEE****Forced Labor Recommendations****010537**

COAC recommends CBP to develop and prioritize proactive, transparent, and bi-directional training with Trade and within the agency to ensure consistency in effective communication, enforcement, and outreach across ports of entry and Centers of Excellence and Expertise related to implementation of Uyghur Forced Labor Prevention Act (UFLPA) and the eradication of forced labor.

**010538**

COAC recommends CBP develop and publish a robust Informed Compliance Publication covering all aspects tied to CBP and forced labor enforcement under 19 U.S.C. § 1307, including the UFLPA and the Countering America's Adversaries Through Sanctions Act (CAASTA) rebuttable presumptions, providing necessary and specific guidance to members of the Trade regarding their reasonable care obligations and the differing evidentiary standards.

**010539**

COAC recommends a new benefit for CTPAT members where CBP provides proactive and collaborative engagement on emerging non-public forced labor risks on a quarterly basis.

**010540**

COAC recommends CBP provide advanced advisory opinions and forced labor rulings related to CTPAT member supply chains to facilitate fully-vetted supply chains, minimizing port disruptions and congestion, while delivering increased predictability in cross border execution.

**010541**

COAC recommends CBP clearly define “Clear and Convincing Evidence” relative to the CBP UFLPA Operational Guidance for Importers, cite specific case law and provide examples of its application by CBP.

**010542**

COAC recommends that CBP include in the UFLPA Operational Guidance for Importers to consider social compliance audits, which may be maintained in the ordinary course of business, as part of the fair clear evidence for demonstrating the absence of Forced Labor for detained shipments.

**010543**

COAC recommends CBP revert to application of 19 U.S.C. § 1307 and 19 C.F.R. § 12.42/43 as the UFLPA enforcement mechanism as opposed to the detention process applied under 19 U.S.C. § 1499.

**010544**

COAC recommends, CBP inform the importer subject to an admissibility issue, with specific information regarding which element of the commodity in the transaction is being questioned, so that specific rebuttal evidence can be provided.

**010545**

COAC recommends CBP update the UFLPA Operational Guidance for Importers to state that CBP will not apply any adverse inferences to an importer's record related to a decision to export merchandise subject to a detention.

**010546**

COAC recommends that CBP adopt and publish a policy that allows importers to transport, In-bond as necessary, to store detained or seized cargo, allegedly produced with forced labor, in a bonded facility (e.g., bonded warehouse or Foreign Trade Zone) within or external to the initial port of import/entry in order to avoid or minimize unnecessary congestion as well as to provide relief from premium carrier and terminal detention or demurrage charges.

**010547**

COAC recommends that CBP not implement a certification requirement as a part of UFLPA enforcement. Importers already certify at the time of entry that the goods are eligible for entry under the presumption of reasonable care. An additional certification is a burden to the Trade and to CBP and is an unnecessary duplication.

**010548**

COAC recommends that CBP should continue to research in collaboration with the Trade, new and emerging technology options that could be beneficial for this risk area, including a pilot program that would have varied applications or a large percentage of stakeholders, including small and medium sized businesses.

**NEXT GENERATION FACILITATION SUBCOMMITTEE****21st Century Customs Framework Recommendations****010549**

COAC recommends that CBP proceed to internally finalize the draft statutory language based on areas addressed in the course of 21CCF discussions for the following statutes:

21CCF Statutory Changes to be Finalized:

CBP Challenge Area 1: Limited Data Collection

- 19 USC 1321
- 19 USC 1498

CBP Challenge Area 2: Restricted Data Usage

- 19 USC 1628a and b

CBP Challenge Area 3: Narrow Visibility and Accountability

- 19 USC 1508
- 19 USC 1509

CBP Challenge Area 4.1: Preventing Loss of U.S. Revenue

- 19 USC 1499

CBP Challenge Area 4.2: Streamlining Enforcement Avenues that Protect U.S. Intellectual Assets and American Consumers

- 19 USC 1514(a)(4)

CBP Challenge Area 4.3: Driving Trade Compliance through Expanded and Streamlined Penalties

- 19 USC 1526(f)
- 19 USC 1436

### **010550**

COAC recommends that CBP, the 21CCF Focus Group, and any additional PGAs as appropriate, continue to discuss and attempt to finalize the below statutory changes proposed by CBP and separately, by industry.

21CCF Statutory Changes for Further Discussion:

CBP Challenge Area 1: Limited Data Collection

- 19 USC 1484

CBP Challenge Area 2: Restricted Data Usage

- 19 USC 1415

CBP Challenge Area 4.1: Preventing Loss of U.S. Revenue

- 19 USC 4320, 1321, and 1498
- 19 USC 1623
- 19 USC 1517

CBP Challenge Area 4.2: Streamlining Enforcement Avenues that Protect U.S. Intellectual Assets and American Consumers

- 19 USC 1526(e), 1595a(f), and 1607

CBP Challenge Area 4.3: Driving Trade Compliance through Expanded and Streamlined Penalties



- 19 USC 1595a(b)
- 19 USC 1595a(d) and (e)
- 19 USC 1592

#### Industry-Proposed Statutory Changes for Further Discussion

- 19 USC 1431(c) - Automatically treat manifest and Customs declaration data of all transportation modes as private and confidential business information.
- 19 USC 1411 and 19 USC 4316 – Codify PGA engagement with trade, including COAC reporting to the existing Border Interagency Executive Council, establishing a framework that requires the PGAs engagement with and reporting to the trade, provides visibility and input to harmonize cargo processing and release protocols, require true IUSG cargo release through interoperable platforms, and also ensures appropriations for funding of such measures.
- 19 USC 4301 – Require each PGA with authority to detain and release merchandise entering the U.S. to set forth CTPAT-PGA minimum security and compliance criteria and to implement a program for importers, exporters, and other appropriate parties, providing benefits, facilitating the release of cargo, minimizing inspections and exams, limiting the recall of merchandise into custody as well as other tangible, meaningful benefits that CBP and PGA’s develop in collaboration with the COAC. The CTPAT PGA programs shall not limit or restrict any PGA’s ability to develop and implement its own trusted trader programs in addition to the CTPAT PGA program, in order to provide more fulsome or recurring benefits.
- Statute TBD – seek legislation that authorizes Congress to appropriate the necessary amounts to carry out improvements in a uniform IUSG single window cargo admissibility, release, and summary, specifically related to improvements in the Automated Commercial Environment and the International Trade Data System and to carry out a government-wide CTPAT-PGA program via the CBP CTPAT portal for each of fiscal years 2023 through 2027.
- 19 USC § 58c in an effort codify the ability to reduce Merchandise Processing Fee (MPF) for CTPAT members and ensure MPF is allocated to CBP for operations and automation.

#### **010551**

COAC recommends CBP proceed to further develop sub-statutory concepts identified in the course of 21CCF discussions leveraging the appropriate COAC working group. These sub-statutory concepts include:

- Enhance uniform data sharing protocols between CBP and Partner Government Agencies (PGAs) to facilitate effective targeting and immediate, true release of cargo within the IUSG ACE platform.
- Engage with the Border Interagency Executive Council (BIEC) to harmonize PGA data collection, analytics, and response to ensure timely decisions. Review the merits and

near-term implementation of account-based processing.

- Evaluate industry's concept of account-based processing.
- Evaluate industry's trade automation wish list.
- Evaluate opportunities to enhance entry processing and explore other modernization opportunities.

## **SECURE TRADE LANES SUBCOMMITTEE**

### **Export Modernization – Recommendation**

#### **010552**

COAC recommends that CBP publish a collaborative draft communication for the Electronic Export Manifest (EEM) pilot. The communication will introduce EEM, outline benefits for participation, and provide critical information on why pilot participation is beneficial in advance of regulation.

### **In-bond Recommendations**

#### **010553**

COAC recommends that title 19 CFR § 4.34 regarding prematurely discharged, overcarried, and undelivered cargo be amended to:

- Allow overcarried cargo to be returned by any bonded carrier
- Allow inaccessibly stowed cargo to be moved by any bonded carrier
- Remove references related to paper processes, including stamps, for prematurely landed or overcarried cargo. In addition, CBP should consider automation of a manifest as the singular solution.

#### **010554**

COAC recommends that title 19 CFR § 4.38(b) [release of cargo] be amended to include language in consideration that carriers do not have visibility to marks or numbers.

#### **010555**

COAC recommends that title 19 CFR § 4.82(b) [touching at foreign port while in coastwise trade] be amended to remove references related to paper processes and add language related to electronic filings, which may include the application for In-bond entry.

#### **010556**

COAC recommends that title 19 CFR § 122.3 [Availability of forms] be stricken in its entirety.

**010557**

COAC recommends that title 19 CFR § 122.5 [Reproduction of Customs forms] be stricken in its entirety.

**010558**

COAC recommends that title 19 CFR § 122.38(d) [Permit and special license to unlade and lade.] be amended to:

- Remove the Customs Form 3171 requirement
- Require that the application for a permit and special license to unlade or lade be submitted via a CBP-approved electronic system.

**010559**

COAC recommends that title 19 CFR § 122.42 [Aircraft entry] paragraph (c) [Delivery of Forms] be amended to read “When the aircraft arrives, the aircraft commander or agent shall provide required notifications to CBP timely.”

**010560**

COAC recommends that title 19 CFR § 122.48 regarding Air cargo manifest be amended to:

- Require the Air Cargo Manifest to be submitted via a CBP-approved electronic system.
- Remove the language that any cargo manifest on board may be inspected.
- Remove the language referencing Customs form 7509, as well as allowing documents to be submitted with the air cargo manifest. In addition, the statement “Cargo as per air waybills attached must appear on the manifest” should be stricken.
- Remove the reference to Customs Form 7509.

**010561**

COAC recommends that title 19 CFR § 122.49 regarding the correction of air cargo manifest or air waybill be amended to:

- Strike sections (a)(1)(i) and (a)(1)(ii) regarding paper process
- Reword section (a)(1)(iii) and (b)(1)(ii) to read “On the cargo manifest”
- Strike section (b)(1)(i) regarding paper processes.
- COAC recommends that title 19 CFR § 122.50 regarding general order merchandise be amended, as follows:
- Replace “warehouse facility” with “facility” to accommodate other facility types

**010562**

COAC recommends that title 19 CFR § 122.50 regarding general order merchandise be amended, as follows:

- Replace “warehouse facility” with “facility” to accommodate other facility types
- Update paragraph (c) to reference and include a subparagraph (i) that reads “To effect the transfer of In-bond cargo to the bonded facility, the carrier will send a message in the Air Manifest System (AMS) notifying the bonded facility that the cargo is ready to be transferred. The bonded facility will reply with a message accepting the cargo. The carrier and the facility will arrange and complete the physical transfer of the cargo, and the facility will then send a second message indicating the possession of the cargo has moved to the facility’s FIRMS code and has been concurred. The liability for the carrier’s original bond will then transfer to the FIRMS code of the bonded facility along with the goods. This process will not require closing the original bond or creating a new one.”

**010563**

COAC recommends that title 19 CFR § 122.73 regarding general declaration and air cargo manifest be amended to remove the paper process and require the filing to be submitted via a CBP-approved electronic system.

**010564**

COAC recommends that title 19 CFR § 122.74 regarding incomplete (pro forma) manifest be amended to:

- Paragraph (a) to read “If a proper bond is filed in ACE”.
- Paragraph (b) be amended to read “must be filed in ACE” as it is no longer filed with the port director.

**010565**

COAC recommends that title 19 CFR § 122.82 [Bond requirements.] be amended to remove the reference to CBP Form 301. In addition, the language should be amended to read “The bond shall be filed in the correct amount in ACE” rather than with the director of the entry airport.

**010566**

COAC recommends that title 19 CFR § 122.92 regarding the procedures at port of origin be amended to:

- Replace paragraph (a) with the following language “In order to transport merchandise In-bond (transport imported merchandise, secured by a bond, from one port to another prior to the appraisement of the merchandise and without the payment of duties), an In-bond application as described in paragraph (d) of section 18.1 is required. An In-bond application consists of a transportation entry and a manifest. A transportation entry as described in paragraph (b) of section 18.1 may be made for any imported merchandise upon its arrival at a port of entry, subject to the prohibitions and restrictions provided in this part.”

- Allow an air waybill for both entry and manifest to be filed through a CBP-approved electronic data interchange system. In addition, the language regarding the paper process should be removed from this subparagraph.
- Allow the airway bill number to replace the bond number to account for partial or split shipments.
- Subparagraph (a)(2)(v)(8)(Item 7) [Signature of Carrier's Agent (or Exporter)] be stricken in its entirety.
- Subparagraph (a)(2)(v)(8)(Item 8) be amended to remove the customs officer's signature and date requirement, as well as strike the language surrounding paper processes.
- Subparagraph (a)(2)(v)(8)(Item 8)(b)(1) and (b)(2) be amended to replace the paper process with an electronic approval process when merchandise is entered for immediate transportation without appraisalment.
- Subparagraph (a)(2)(v)(8)(Item 8)(b)(2) be amended to replace the paper process with an electronic approval process when merchandise is entered for transportation and exportation.
- Subparagraph (a)(2)(v)(8)(Item 8)(b)(3) [After delivery.] be stricken in its entirety to eliminate the reference to paper processes.
- Subparagraph (a)(2)(v)(8)(Item 8)(c) [Receipt and supervision] be amended to require agents of bonded air carriers to notify and confirm receipt electronically for any merchandise delivered to it for transportation in bond.
- Remove references related to paper processes.
- Remove the word "copy" when referencing the entry and manifest.
- Subparagraph (a)(2)(v)(8)(Item 8)(e) be amended to correct the spelling of the word Transshipment.
- Subparagraph (a)(2)(v)(8)(Item 8)(g) regarding warning labels be stricken in its entirety as they are no longer a requirement.

#### **010567**

COAC recommends that the title 19 CFR § 122.93 regarding the procedure at destination or exportation airport be amended to:

- Reword the title for paragraph (a) from [Delivery to port director.] to [Notification of arrival.].

- Require the bonded carrier to electronically notify CBP of the arrival through a CBP-approved electronic data interchange system.
- Require the bonded carrier to electronically notify the consignee through a CBP-approved electronic data interchange system when the merchandise is sent under an entry for immediate transportation without appraisal.

#### **010568**

COAC recommends that title 19 CFR § 122.94 be amended to:

- Reword the title from [Certificate of lading for exportation.] to [Notification of exportation.]
- Remove the references related to paper processes and require the notification of exportation to be filed through a CBP-approved electronic data interchange system
- Strike subparagraph (b) [Clearance not at place of final departure.] in its entirety.

#### **010569**

COAC recommends that title 19 CFR § 122.113 regarding form for transit air cargo manifest procedures be amended to:

- Read [Transit air cargo manifest procedures.]
- Eliminate the language surrounding paper processes and require the manifest to be submitted through a CBP-approved electronic data interchange system

#### **010570**

- COAC recommends that title 19 CFR § 122.114 [Contents.] be amended to remove the language surrounding paper processes, specifically those processes referencing forms and sheets.

#### **010571**

COAC recommends that title 19 CFR § 122.115 [Labeling of cargo.] be stricken in its entirety.

#### **010572**

COAC recommends that title 19 CFR § 122.116 [Identification of manifest sheets.] be amended to:

- Read [Identification of manifest.] in place of [Identification of manifest sheets.]
- Remove the language surrounding paper processes
- Require the original cargo manifest for the aircraft to be automated and submitted to CBP through an approved electronic data interchange system.
- Replace the reference to “Customs” with “CBP”

**010573**

COAC recommends that title 19 CFR § 122.117 regarding requirements for transit air cargo transport be amended to:

- Remove references related to paper processes
- Require the receipt to be issued by the airline responsible for transport or export within the general order period through a CBP-approved electronic data interchange system.
- Subparagraph (b)(2) regarding receipts be stricken in its entirety.
- Replace references to “Customs” with “CBP”
- Subparagraph (c)(4)(iii) regarding importing carriers be amended to include the following language: “To effect the transfer of In-bond cargo to the domestic carrier, the importing carrier will send a message in the Air Manifest System (AMS) notifying the domestic carrier that the cargo is ready to be transferred. The domestic carrier will reply with a message accepting the cargo. The two carriers will arrange and complete the physical transfer of the cargo, and the domestic carrier will then send a second message indicating the possession of the cargo has moved to the domestic carrier’s FIRMS code and concurred by the receiving party. The liability for the importing carrier’s original bond will then transfer to the FIRMS code of the domestic carrier along with the goods.”
- Subparagraph (c)(4)(iii) be amended to strike the language that reads “the importing carrier’s bond covers the transportation.”

**010574**

COAC recommends that title 19 CFR § 122.118 regarding exportation from port of arrival be amended to:

- Remove the references related to paper processes.
- Require the air cargo manifest to be submitted through a CBP-approved electronic data interchange system.
- Require the name of the exporting airline to appear on the manifest.
- Remove the word “copy” when referencing the Transfer air cargo manifest copies (c)(1)(2)(3).
- Require that the exportation manifest be submitted by the exporting airline through a CBP-approved electronic data interchange system.
- Require that the clearance be filed with the exporting aircraft's clearance documents through a CBP-approved electronic data interchange system.

- Require the transit air cargo manifest to be submitted through a CBP-approved electronic data interchange system.
- Require the transit air cargo manifest to clearly indicate which shipment(s) are covered by the manifest.
- Require a split shipment indicator when shipments listed on one transit air cargo manifest are not exported from the same port on the same airline.
- Require the manifest for post entered air cargo to be submitted through a CBP-approved electronic data interchange system.
- Replace references to “reviewing officer” and “Customs” with “CBP.”

#### **010575**

COAC recommends that title 19 CFR § 122.119 regarding transportation to another U.S. port.] be amended to:

- Replace the references to “Customs” with “CBP”.
- Paragraph (c) [Transit air cargo manifest copies.] be amended to read “Transit air cargo manifest.”
- Remove the references related to paper processes
- Require the transit air cargo manifest to be submitted through a CBP-approved electronic data interchange system.
- Determine the amount of duty and tax based on the information found on the manifest.
- Subparagraph (e)(1) be amended to include the following language: “To effect the transfer of In-bond cargo to the surface carrier, the importing air carrier will send a message in the Air Manifest System (AMS) notifying the surface carrier that the cargo is ready to be transferred. The surface carrier will reply with a message accepting the cargo. The two carriers will arrange and complete the physical transfer of the cargo, and the surface carrier will then send a second message indicating the possession of the cargo has moved to the surface carrier’s FIRMS code. The liability for the importing air carrier’s original bond will then transfer to the FIRMS code of the surface carrier along with the goods. The surface carrier will move the goods to the port of destination, where the bond will be closed.”
- Subparagraph (e)(1) be amended to strike the language that reads: “The bond of the party receiving the cargo for surface movement must cover the transfer and surface movement.”

#### **010576**

COAC recommends that title 19 CFR § 122.120 regarding transportation to another port for exportation be amended to:



- Replace references to “Customs” with “CBP”
- Reword paragraph (d) (Transit air cargo manifest copies.) to read (Transit air cargo manifest.)
- Remove references related to paper processes.
- Require the transit air cargo manifest to be submitted through a CBP-approved electronic data interchange system.
- Strike subparagraph (d)(2) [Port of exportation.] in its entirety.

## **Partnership Programs and Industry Engagement Recommendations**

### **010577**

COAC recommends that CBP update the CTPAT Trade Compliance Handbook section related to forced labor to allow CTPAT Trade Compliance members to follow a risk-based approach for supply chain mapping. The mapping requirement must be further defined to include only those portions of the supply chain that the importer determines pose the most risk for forced labor.

### **010578**

COAC recommends the Mission Statement requirement be modified and included as part of the Code of Conduct requirement.

### **010579**

COAC recommends that CBP update the CTPAT Trade Compliance Handbook section related to Code of Conduct training so that it clearly defines the acceptable types of business partner training to demonstrate compliance and ensure enforcement consistency across CBP Port staff, National Account Managers and Centers of Excellence and Expertise.

### **010580**

COAC recommends CBP provide documented implementation guidance and training on the finalized Forced Labor CTPAT Trade Compliance minimum requirements to ensure understanding and consistent interpretation amongst Importers, CBP Port staff, National Account Managers and Centers of Excellence and Expertise. The guidance and training materials should be made publicly available for future reference and review by participants in the CTPAT Trade Compliance Program and those considering applying.

### **010581**

COAC recommends that CBP update the CTPAT Trade Compliance Handbook section related to the Business Partner Code of Conduct to remove the requirement dictating that partners incorporate the same Code of Conduct as their CTPAT Trade Compliance member. Business partners should be permitted to develop their own Code of Conduct to meet the forced labor requirements so long as the Code of Conduct clearly demonstrates that the business partner understands the forced labor requirements.

**September 14, 2022**

**NEXT GENERATION FACILITATION SUBCOMMITTEE  
21st Century Customs Framework Recommendations**

**010582**

COAC recommends CBP increase transparency for the Trade for Customs Mutual Assistance Agreements (CMAAs) and CBP must ensure the text of each is linked to the CBP website.

**010583**

COAC recommends that CBP proceed to internally finalize the draft statutory language based on areas addressed in the course of 21CCF discussions for the following statutes:

**21CCF Statutory Changes to be Finalized:**

CBP Challenge Area 1: Limited Data Collection

- 19 USC § 1484

CBP Challenge Area 2: Restricted Data Usage

- 19 USC § 1415

CBP Challenge Area 4.1: Preventing Loss of U.S. Revenue

- 19 USC § 4320
- 19 USC § 1498

CBP Challenge Area 4.2: Streamlining Enforcement Avenues that Protect U.S. Intellectual Assets and American Consumers

- 19 USC § 1526(e)
- 19 USC § 1595a(f)
- 19 USC § 1607

**010584**

COAC recommends that CBP, the 21CCF Focus Group, and any additional PGAs as appropriate, continue to discuss and attempt to finalize the below statutory changes proposed by CBP and separately, by industry.

**CBP-Proposed Statutory Changes for Further Discussion:**

CBP Challenge Area 1: Limited Data Collection

- 19 USC § 1431

CBP Challenge Area 4.1: Preventing Loss of U.S. Revenue

- 19 USC § 1623
- 19 USC § 1517

CBP Challenge Area 4.3: Driving Trade Compliance through Expanded and Streamlined Penalties

- 19 USC § 1595a(b)
- 19 USC § 1595a(d) and (e)
- 19 USC § 1592

### **Industry-Proposed Statutory Changes for Further Discussion:**

- 19 USC § 1411 and 19 USC § 4316 – Codify PGA engagement with the Trade, including COAC reporting to the existing Border Interagency Executive Council, establishing a framework that requires the PGAs engagement with and reporting to the Trade, provides visibility and input to harmonize cargo processing and release protocols, requires true 1USG cargo release through interoperable platforms, and also ensures appropriations for funding of such measures.
- 19 USC § 4311 – Require each PGA with authority to detain and release merchandise entering the U.S. to set forth CTPAT-PGA minimum security and compliance criteria and to implement a program for importers, exporters, and other appropriate parties, providing benefits, facilitating the release of cargo, minimizing inspections and exams, limiting the recall of merchandise into custody as well as other tangible, meaningful benefits that CBP and PGAs develop in collaboration with the COAC. The CTPAT PGA programs shall not limit or restrict any PGA’s ability to develop and implement its own trusted trader programs in addition to the CTPAT PGA program, in order to provide more fulsome or recurring benefits.
- 19 USC § 1431(c) - Automatically treat manifest and Customs declaration data of all transportation modes as private and confidential business information.
- 19 USC § 58c in an effort to codify the ability to reduce the Merchandise Processing Fee (MPF) for CTPAT members and ensure the MPF is allocated to CBP for operations and automation.
- Statute TBD – seek legislation that authorizes Congress to appropriate the necessary amounts to carry out improvements in a uniform 1USG single window for cargo admissibility, release, and summary, specifically related to improvements in the Automated Commercial Environment and the International Trade Data System and to carry out a government-wide CTPAT-PGA program via the CBP CTPAT portal for each of fiscal years 2023 through 2027.

### **ACE 2.0 Recommendations**

#### **010585**

COAC recommends CBP continue to pursue further assessment and analysis of modern technologies and innovative tools. Such tools must improve management and reporting of global supply chain data and efficient cargo release.

#### **010586**

COAC recommends CBP promote and encourage Partner Government Agencies (PGA) to sync and modernize processes and infrastructure to allow expanded adoption of the single window.

## **E-Commerce Recommendation**

### **010587**

COAC recommends that CBP share with the E-commerce Task Force the initial HTSUS waiver proposal draft, compliance process, and/or additional data waiver prior to its finalization, and prior to any notice or release to the public.

## **SECURE TRADE LANES SUBCOMMITTEE**

### **Export Modernization – Recommendations**

#### **010588**

COAC recommends that CBP publish the “Electronic Export Manifest Pilot Document: Outlined Benefits for Why You Should Participate” paper in its entirety. The document should be posted to CBP.gov and a corresponding Cargo Systems Messaging Service email sent to the trade to maximize the reach for pilot participation and expansion.

#### **010589**

COAC recommends that CBP perform an internal review to determine the necessary resources to support additional pilot participation in advance of the Notice of Proposed Rulemaking for the Electronic Export Manifest for Rail, Ocean and Air modes of transportation.

**December 7, 2022**

## **NEXT GENERATION FACILITATION SUBCOMMITTEE**

### **21st Century Customs Framework Task Force Recommendations**

#### **010590**

COAC recommends that CBP, the 21CCF Focus Group, and any additional PGAs as appropriate, continue to discuss and attempt to finalize the below statutory changes proposed by CBP and separately, by industry.

#### **Industry-Proposed Statutory Changes for Further Discussion (Trade Opportunities):**

- 19 USC § 1401 & 1484(a)(2)(D)
- 19 USC § 1484 (a)(2)(C) & 1321(c)
- 19 USC § 1629
- 19 USC § 1484(c)
- 19 USC § 1411
- 19 USC § 4311
- 19 USC § 304 & 305

#### **CBP-Proposed Statutory Changes for Further Discussion (CBP Challenges):**

- 19 USC § 1517
- 19 USC § 1623
- 19 USC § 1595a(b)
- 19 USC § 1595a(d)&(e)
- 19 USC § 1592

#### **010591**

COAC recommends that CBP, establish a formal COAC Working Group to explore opportunities where CBP's Centers of Excellence and Expertise can deliver centralized trade facilitation processes and explore enforcement modernization concepts originally summarized in the Intelligent Enforcement Modernization White Paper, first published October 2020.

#### **010592**

COAC recommends that CBP, bring the following topics to the Forced Labor Working Group to fully evaluate:

- a. CBP's ability to share data with importers to help eradicate and address forced labor and provide for advance notice of detention to streamline an importer's ability to begin assembling evidence to demonstrate compliance; and
- b. When detaining goods on the basis of a Withhold Release Order (WRO) or the Uyghur Forced Labor Protection Act (UFLPA), CBP should identify the specific component or part/parties of concern, instead of requiring an importer to provide documentation for all materials/components from all parties touching the supply chain. This will ensure that any issues of forced labor in the supply chain are addressed, while expediting the review process for CBP and the trade.

### **E-Commerce Task Force Recommendation**

#### **010593**

COAC recommends CBP compile & report, quarterly, statistics of all shipments that receive CBP §321 release via either Manifest Release or Entry Type 86. CBP should segregate statistics by express, postal, non-express air, non-express sea, and non-express truck.

### **INTELLIGENT ENFORCEMENT SUBCOMMITTEE**

#### **Intellectual Property Rights (IPR) Process Modernization Recommendations**

#### **010594**

COAC recommends that CBP automate the agency's detention and seizure process. In automating the process, CBP's systems (ACE, SEACATS, etc.) should be paired, so that they can function together as a single automated system to address all CBP enforcement priorities, which can be appropriately linked to entry and line-item data housed with CBP. Although, this recommendation was developed in the IPRWG, the detention and seizure process encompasses many different enforcement priorities, including IPR, forced labor, restricted goods, and admissibility issues enforced on behalf of other agencies such as the Food and Drug Administration (FDA), all of which must be serviced by a single automated system.

#### **010595**

COAC recommends that as a part of this automated system, in the near term, CBP develop and adopt electronic exam/detention/imaging technologies and procedures that can be used by officers to collect data onsite during exam.

**010596**

COAC recommends that as a part of this automated system, in the near term, CBP develop and adopt the means to generate electronic notices of detention for transmission to interested parties and that those notices include mandatory and standardized data elements, including images as appropriate, to provide meaningful information to interested parties regarding the basis for any detention.

**010597**

COAC recommends that as a part of this automated system, in the near term, CBP develop and adopt the use of a unique identifier as a reference number. This unique identifier, which should not be subject to the restrictions of the Trade Secrets Act, can then be referenced throughout the process by all interested parties.

**010598**

COAC recommends that CBP develop and adopt a system for receiving and using email addresses from importers and other interested parties to facilitate communication within this automated process.

**010599**

COAC recommends that CBP develop a portal that can be accessed via the IPR priority trade issue (PTI) website (Intellectual Property Rights | U.S. Customs and Border Protection Preview (cbp.gov)) to allow for direct and confidential communications between CBP and interested parties such as rights holders, importers, shippers, and others. CBP relies upon information from a variety of sources to make informed decisions on IPR enforcement, and its decision-making will be enhanced through direct communications with those sources in an electronic environment provided that sensitive shared information is maintained as secure and confidential.

**010600**

COAC recommends that with respect to rights holders, the portal allow for the creation of password protected accounts for rights holders that have recorded their marks with CBP. That portal account should allow:

- ACCESS – rights holders should be able to access notifications and, as appropriate, images from CBP concerning shipments including allegedly infringing merchandise.
- SHARE – rights holders should be able to exchange information and images with CBP relevant to specific enforcement actions that can be tracked utilizing a unique identifier, which can be referenced throughout the enforcement process.
- INITIATE & PROCESS – CBP and rights holders should be able to use the portal to initiate and process CBP activities, including manipulation and abandonment, throughout the enforcement process, including during detention.

**010601**

COAC recommends that with respect to IMPORTERS AND OTHER INTERESTED PARTIES, the portal incorporate a search mechanism. The search mechanism should allow:

- ACCESS – importers and other interested parties should be able to utilize a unique identifier to access notifications and images from CBP concerning shipments that are detained for allegedly including infringing merchandise.
- SHARE – importers and other interested parties should be able to utilize a unique identifier to exchange information, images, and file responses and/or petitions with CBP relevant to specific actions throughout the entire enforcement process.
- INITIATE & PROCESS – importers and other interested parties should be able to utilize a unique identifier to initiate and process CBP activities, including manipulation and abandonment, throughout the enforcement process, including during detention.

## **Forced Labor Working Group Recommendations**

### **010602**

COAC recommends that CBP publish a series of visual ‘Fact Sheets’ to help and empower U.S. Importers of all sizes to understand better the operational processes to comply with UFLPA and WRO enforcement. COAC recognizes that Fact Sheets are an important mechanism to provide expedited and practical clarity to the trade community prior to the development of a Forced Labor Informed Compliance publication as recommended in the 15<sup>th</sup> term (Recommendation 10421).

The fact sheets should describe in a flowchart format CBP’s operational processes including:

- a. Detention to release, exclusion or Import entry rejection (both for WROs and UFLPA).
  - i. The Fact Sheets should outline the step-by step coordination between the ports, CEEs, CBP HQ and the Importer.
  - ii. The Fact Sheets should provide clarity to the importer on what to do next (e.g., who to contact, contact information, when to notify and how to notify involved parties, etc.) and what to expect after receiving a detention notice from CBP.
  - iii. The Fact Sheets should also clarify steps importers should take if they wish to seek an exception to the UFLPA or request an applicability review (determination that the detained goods are not subject to the UFLPA) or seek an admissibility review (determination that the goods are not subject to a WRO) by CBP. This should include the mechanism for how importers can best and most efficiently transmit supply chain documentation to CBP in support of these requests (email, drop box, etc. given the large number of documents that may need to be transmitted).
  - iv. The Fact Sheets should also include the process that importers must follow when additional shipments that have identical supply chains to those that have been reviewed previously and determined to be admissible by CBP, to facilitate proactive information sharing with CBP and streamline the release process.

b. Ruling process flow to request a determination from CBP that a specific commodity, import does not fall under the UFLPA or active WRO:

- i. Fact Sheets should include where the importer should file the ruling request (including contact information) and how to utilize the ruling for future imports of the identical supply chain.

c. The fact sheets should be available on CBP's Forced Labor Webpage and linked to CBP's UFLPA Webpage as appropriate. The operational fact sheets should also be added to the existing 'slick sheets' section in CBP's webpages.

#### **010603**

COAC recommends that CBP develop a mechanism to receive additional questions and requests for new FAQs from the public, periodically review the posted FAQs, and publish updated FAQs as continuous training/awareness to the trade community. For instance, CBP could establish an email address to receive 'other questions' that are not included in the currently published FAQs.

#### **010604**

COAC recommends that CBP revamps its Forced Labor and UFLPA Webpages to clearly indicate to the public when updates or changes are made to guidelines, operational processes, fact sheets, FAQs, ACE, or any other relevant information for the trade community. The updates should include a tracking history when the changes are made and be searchable and indexable for simple reference. Additionally, CBP should establish a consistent 'push' communication protocol, using existing tools such as the Cargo System Messaging Service 'CSMS' to quickly maximize outreach to brokers, importers and the trade community when sharing forced labor updates.

#### **010605**

COAC recommends that CBP enhance the current quarterly forced labor enforcement statistics that are published to include additional indicators about enforcement activity, not just the number of shipments targeted to increase transparency and bi-directional communication to support the eradication of forced labor. These additional indicators should include the number of detentions, commodity types detained, country of origin of products detained, the number of shipments released, etc.

### **SECURE TRADE LANES SUBCOMMITTEE**

#### **Export Modernization Working Group Recommendations**

#### **010606**

COAC recommends that the CTPAT process be explored by CBP for exports.

#### **010607**

COAC recommends that a verification process be explored by CBP for used self-propelled vehicle exports that will be carried out consistently across all ports so that the carrier can be made aware of those vehicles that may not have met the 72-hour prior to export requirement by the exporter. This verification process should include automation with an electronic notification



to carriers so that the carrier and CBP can be aware that the vehicle has been presented and verified by CBP, prior to clearance for export.

## **In-bond Working Group Recommendations**

### **010608**

COAC recommends that all definitions relating to In-bond cargo be consolidated into title 19 CFR § 18.0(b).

### **010609**

COAC recommends that a definition for “Bonded Party” be added to in title 19 CFR § 18.0(b) and defined as “the party whose bond is obligated on the transportation entry.”

### **010610**

COAC recommends that the definition of an “In-bond” be added to title 19 CFR § 18.0(b) and defined as a “Transaction that permits the movement of cargo through the United States, under customs control, without payment of duty and taxes prior to entry into domestic consumption or a bonded warehouse, admission into a Foreign Trade Zone, or exportation to foreign countries. In-bond transactions are defined by specific entry type and function.”

### **010611**

COAC recommends that title 19 CFR § 18.1(b)(2) and 18.1(b)(3) related to warehouse withdrawals be stricken due to no longer being valid entry types.

### **010612**

COAC recommends that title 19 CFR § 18.1(d)(2) [Method of submission] be amended, removing the exception for the air mode referencing back to title 19 CFR § 122.

### **010613**

COAC recommends that CBP provide trade with the ability to electronically request In-bond transit time extensions and to amend title 19 CFR § 18.1(i)(2) to reflect electronic capability.

### **010614**

COAC recommends that title 19 CFR § 18.1(j) be amended to require the report of arrival with the option of either within two business days after the arrival of the first portion or the final portion of an In-bond shipment at the port of destination or the port of exportation, within the specified reporting timeframes.

### **010615**

COAC recommends that the following In-bond rule be implemented by CBP and included in title 19 CFR § 18.1.

- a. Report Acceptance. Within two business days after the complete arrival of the In-bond shipment at the port of destination, the recipient of the merchandise must notify CBP via a CBP approved EDI system their receipt of the merchandise and the conditions of liability under its bond. The notification to CBP must include the FIRMS code for the facility that took receipt of the merchandise. The recipient will be held liable under its

bond for the receipt of merchandise in the quantity and condition as described on the In-bond, except as modified by a Manifest Discrepancy Report or its electronic equivalent.

**010616**

COAC recommends that 19 CFR § 18.2(a) be amended to read “Transportation of merchandise In-bond by bonded or non-bonded carriers.”

**010617**

COAC recommends that 19 CFR § 18.2(a)(1) be amended, replacing “...the responsibility for the merchandise will remain with the common carrier, contract carrier, or freight forwarder that obligated its bond for that purpose” with “...the responsibility for the merchandise will remain with the bonded party that obligated its bond for that purpose”.

**010618**

COAC recommends that CBP implement an electronic messaging within existing systems that will notify and allow the receiving bonded party to accept liability for the In-bond cargo upon transfer from another bonded party.

**010619**

COAC recommends that 19 CFR § 18.3(b) [transfers] be amended to include the following language: “The receiving party may review the bonded merchandise, while holding and safeguarding the In-bond merchandise, may open the container to view, verify and count without causing impairment to the integrity of the product’s original measurement and/or valuation.”

**March 29, 2023**

**SECURE TRADE LANES SUBCOMMITTEE**

**Cross-Border Recognition Working Group**

**010620**

COAC recommends CBP continues to work with Mexican authorities (SAT, ANAM, et al.) to align the program requirements for Customs Trade Partnership Against Terrorism (CTPAT) and Mexico’s Authorized Economic Operator (AEO) program, with an eye toward harmonizing the AEO certification, validation, and revalidation processes.

- a. Develop bilateral deadlines and performance measures for this work; and
- b. Provide technical assistance and capacity building, as appropriate, to the Mexican authorities, with a focus on achieving and maintaining sufficient personnel levels to meet the demands of the AEO program.

**010621**

COAC recommends CBP work with US Regulatory agencies (USDA/APHIS and others) and Mexican authorities (SENASICA and others) to evaluate a Mutual Recognition initiative for agriculture products that increases efficiency and reduces redundant inspections at the border.

- a. The Mutual Recognition (MR) agreement between the agencies will formalize a Joint Work Plan (JWP) outlining mutually agreeable deadlines and performance measures;
- b. Expand on the Joint Inspection program that allows inspections to take place at select inland locations in the US and Mexico; and

- c. Explore the use of high security seals/tracking devices to assure the security of agriculture products as part of this work.

#### **010622**

COAC recommends CBP address emerging market conditions through the enhanced use of data integration, technology, transparency, and communication while further developing the Authorized Economic Operator Program. The project should consider the following phases:

- a. **Develop bilateral requirements:** Define sectors, regions, company size, supply chain requirements, actual government certification's requirements, among others.
- b. **Design communication and data sharing procedures:** Design processes including formats, type of technology, IT systems that authorities will need to develop and harmonize.
- c. **Build trust through the current pilot program (or develop new pilot programs) to certify a complete logistic chain on both sides of the border:** Include sectors that are already selected in the HLED (High-Level Economic Dialog), such as the manufacture industries of automotive, aerospace, medical devices, and agrobusiness through ports of entry like Tijuana-Otay Mesa, Juarez-El Paso and Laredo-Nuevo Laredo
  - i. Expand on the specific area for joint inspections;
  - ii. use of a CBP seal to assure that the merchandise is secure (e.g., as is done for avocados);
  - iii. build trust among binational authorities rather than focusing on tax incentives.
- d. **Design operational and administrative incentives (excluding tax implications). Upon successful completion of the pilot, expand program in phases.**

### **Export Modernization Working Group**

#### **010623**

COAC recommends that, for full visibility, CBP evaluate the development of a process to connect lowest level house bill of lading information to the exporting carrier's manifest for multi-modal shipments exporting the U.S. via land borders, for subsequent departure from non-U.S. air/seaports to foreign destinations.

### **In-bond Working Group**

#### **010624**

COAC recommends that 19 CFR 18.1(i)(1) be amended to extend the maximum in-transit time from 30 days to 60 days for all merchandise to be transported In-bond. Currently, only merchandise transported via barge is allowed 60 days. Extending the in-transit time will harmonize the threshold across all modes and accommodate movements requiring additional transit time, alleviating the need to request extensions.

#### **010625**

COAC recommends that CBP provide Trade with the ability to electronically request an extension of in-transit time via ACE or CBP-approved EDI system for all merchandise to be transported In-bond. Currently, 19 CFR 18.1(i)(2) requires extension requests to be submitted in writing to the port director at the port of destination or port of exportation. Moving to a paperless

solution will streamline the request process and is consistent with other In-bond requests, such as diversions.

**010626**

COAC recommends that CBP communicate all In-bond hold messages in real-time via push messaging in a CBP-approved EDI system. Currently, Trade is required to proactively query each master bill of lading multiple times during the life of the shipment to check for a hold status. The current process is inefficient and burdensome for Trade, with most queries resulting in no hold. Recognizing that holds are important, CBP should actively push out real-time hold notifications eliminating the need for Trade to query every In-bond movement.

**RAPID RESPONSE SUBCOMMITTEE**

**USMCA Working Group**

**010627**

COAC recommends that CBP should recommend to the Office of the United States Trade Representative the following agenda item for inclusion at the next Article 7.24 Trade Facilitation Committee meeting:

- a. That the United States, Mexico and Canada establish a means to include outside stakeholders (*e.g.*, civil society, organized labor, private sector, etc.) in the work of the USMCA Trade Facilitation Committee established by Article 7.24 of the agreement.
- b. Looking to COAC as a model, this mechanism should, at a minimum, provide regular and routine ways to transmit views to the Committee and to learn about its work on an ongoing basis.